84-937

No. _____

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IN THE

Supreme Court of the United States

October Term, 1984

WESLEY K. BELL, individually and d/b/a WES OUTDOOR ADVERTISING CO.,
Plaintiff-Appellant,

vs.

STATE OF NEW JERSEY, BRENDAN T. BYRNE, LOUIS J. GAMBACCINI, JOHN J. DEGNAN, DOROTHY ANDRES, RUSSELL H. MULLEN, CLARENCE PELL, VINCENT R. STOLOWSKI, WILLIAM DAVIDOWSKY, WILLIAM BURNHAM, JOSEPH CUNNINGHAM, ALAN SAGNER and NEW JERSEY DEPARTMENT OF TRANSPORTATION, an agency of the State of New Jersey,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

APPENDIX TO JURISDICTIONAL STATEMENT

WESLEY K. BELL
Plaintiff-Appellant, Pro Se
P.O. Box 538
188 Route #72
Manahawkin, New Jersey 08050
(609) 597-3222

December 12, 1984

Batavia Times Publishing Co.
Batavia, N.Y. (716) 344-2000

178 pp

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Court Order, 45 Day Notice, May 29, 1969

ORDER MODIFYING JUDGMENT ENTERED HEREIN ON MARCH 24, 1969

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
OCEAN COUNTY
DOCKET NO. L-13980-68 P.W.

WES OUTDOOR ADVERTISING COMPANY, etc.,
Plaintiffs,

vs.

DAVID J. GOLDBERG, etc.,
Defendant.

Civil Action

THIS MATTER coming on to be heard in the presence of Hartman and Schlesinger, Attorneys for Plaintiffs-Defendants on Counterclaim, Jan M. Schlesinger, Esquire appearing, and Arthur J. Sills, Attorney General of New Jersey, attorney for the Defendant on Counterclaim, Royal B. Giffen, Deputy Attorney General appearing; and it appearing to the Court that good cause exists for the modification of the Judgment previously entered herein on March 24, 1969; and it appearing that counsel for the respective parties consent to the entry of this Order;

IT IS on this 29th day of May 1969

ORDERED that the Judgment entered herein on March 24, 1969 be and the same is hereby modified as follows:

Court Order, 45 Day Notice, May 29, 1969.

Plaintiffs-Defendants on counterclaim may erect signs on land already cleared providing their agents, servants and employees does not destroy vegetation, clear additional land or interfere with its restoration, preservation or enhancement.

The permission granted Plaintiffs-Defendants on Counterclaim hereunder does not affect any rights which may be asserted by any state agency other than the Department of Transportation.

Any improvements made to the parcels in Exhibit A attached to the Judgment entered March 24, 1969 after the date of this Order are not to be considered as increasing the value of these parcels should a condemnation award be made. Plaintiffs-Defendants also are to remove any improvements made on these parcels at their expense upon forty-five (45) days notice should the State obtain a right of immediate possession.

s/ EDWARD V. MARTINO
J.S.C.

We hereby consent to the
entry and form of the
foregoing Order.

ARTHUR J. SILLS
Attorney General of New Jersey

By /s/ Royal B. Giffen
Royal B. Giffen
Deputy Attorney General

HARTMAN and SCHLESINGER
Attorneys for Plaintiffs-Defendants

By /s/ Jan M. Schlesinger
Jan M. Schlesinger

Court Order, 45 Day Notice, May 29, 1969.

EXHIBIT A

Designation on Stafford Township Tax Map		Designation on Department of Transportation General Parcel Property Map	
Block	*Lot*	*Parcel*	*Section*
67	8	L11B	6
145 (145B)	5	L15G	7
(145B)	9	L17G	7
	10	L17D	7
	12	L17F	7
	26	L22C	7
	26A	L22B	7
	32	L15H	7
	37	L17E	7
144(A)	27	L12D	7
146	25	L30C	7
147	2	L12E & L23E	7
	29	LR30D	7
	31	LR31D	7
158	10	L35D	7
298	1	TLE1F	8
	2	L5C	8
	3	L3E	8
	4	L3E	8
		L10N	6
		L16B	6
		L17C	6
		L18B	6
		L19B	6

Order Dismissing D.O.T. and State No. 77-1531
Judge Barlow, December 12, 1977

ORDER

UNITED STATES DISTRICT COURT
For the District of New Jersey

WESLEY K. BELL,

Plaintiff,

vs.

STATE OF NEW JERSEY; *et al.*,

Defendants.

Civil Action No. 77-1531.

Assigned to George H. Barlow, U.S.D.J.

This matter having been heard by the court upon motion and application of William F. Hyland, Attorney General of New Jersey, to dismiss the plaintiff's Complaint against the defendants, State of New Jersey and New Jersey Department of Transportation, for lack of jurisdiction and for failure to state a claim upon which relief could be granted, and this court having considered said application, motion, and the arguments of the defendants, and good cause appearing,

IT IS, on this 12 day of December, 1977,

ORDERED that the Complaint in this matter against the defendants, State of New Jersey and New Jersey Department of Transportation, be dismissed.

s/ GEORGE H. BARLOW
U.S.D.J.

[1] **Oral Opinion No. 77-1531 Judge Barlow**
March 6, 1978

ORAL OPINION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

WESLEY K. BELL,

Plaintiff,

vs.

DOROTHY ANDRES, *et al.*,

Defendants.

Civil 77-1531.

Trenton, New Jersey

March 6, 1978

Before The Honorable GEORGE H. BARLOW, *USDJ*

1. Hearing on plaintiff's motion for preliminary injunction against defendants Mullen, Andres, Stolowski and Davidowski.

2. Hearing on plaintiff's motion for default judgment on all individual defendants, except Burnham and Anton.

3. Hearing on motion of all defendants to dismiss complaint and for costs and attorneys' fees.

APPEARANCES:

Hartman, Schlesinger, Schlosser & Faxon, For Plaintiff; By: Michael H. Malin (Pennsylvania Bar).

Oral Opinion No. 77-1531 Judge Barlow 3/6/78.

Berry, Summerill, Piscal, Kagan & Privetera, For Defendants Burnham and Anton; By: Jack Sahradnik.

[2] Richard J. Harcar, Deputy Attorney General, For all defendants except Anton and Burnham

and

Jeffrey M. Hall, Deputy Attorney General.

[3] * * *

THE COURT: The complaint in this action seeks relief pursuant to 42 United States Code sections 1983 and 1986. We note that an action will not lie under section 1986 unless a vaild claim exists under 42 United States Code section 1985. *Hahn v. Sargent*, 523 F.2d 461 (1st Cir. 1975), cert. denied 425 U.S. 904 (1976).

I find no allegation, as required by section 1985 that the defendants' actions were motivated by a racial or otherwise class-based invidiously discriminatory animus. *Griffin v. Breckenridge*, 403 U.S. 88, 102-103 (1971). Therefore, I can find no cause of action to have been stated as to section 1985. See *Carter v. Cuyler*, 415 F.Supp. 852, 857 (E.D. Pa. 1976); *Whetzler v. Krause*, 411 F.Supp. 523, 528 (E.D. Pa. 1976). Thus, for failure to state a colorable claim under section 1985, the plaintiff is entitled to no relief under section 1986. *Hahn, supra.*

Moreover, I find that even if the plaintiff could be deemed to have stated a cause of action under section 1986, it must be barred by that section's one-year statute of limitations.

Accordingly, defendants' application is granted as to the 1986 claim. Federal Rules of Civil Procedure 12(b)(6).

Oral Opinion No. 77-1531 Judge Barlow 3/6/78.

[4] Without a conspiracy count in the complaint, we now turn to the plaintiff's section 1983 claims. Under this section of the Civil Rights Act, a defendant may only be held liable for their personal deprivation of another's civil rights. *Bracey v. Grenoble*, 494 F.2d 566 (3d Cir. 1974).

The doctrine of respondeat superior does not obtain in section 1983 actions. *Hampton v. Holmesburg Prison Officials*, 546 F.2d 1077, 1082 (3d Cir. 1976). Defendants Kohl, Sagner, Goldberg, Burnham, Glaser and Davidowski are not alleged to have committed any specific acts against the plaintiff. Accordingly, as to them, the action must be dismissed.

The defendant Andres is mentioned in the complaint as having authored one letter wherein she admitted that the plaintiff was entitled to billboard permits. We find no valid section 1983 claim here, and the action is dismissed as to this defendant.

As to the defendants Pell, Mullen, and Cunningham, they are charged with acting to deprive the plaintiff of his civil rights back in 1968 and 1969. The defendants argue that the claims against them should be dismissed as barred by the Statute of Limitations. Under *Polite v. Diehl*, 507 F.2d 119 (3d Cir. 1974), I must apply the forum state's statute of limitations in section 1983 [5] actions. We agree with the defendants that New Jersey courts would apply a six-year statute of limitations here for malicious interference with business. See New Jersey Statutes Annotated 2A:14-1. Thus, these defendants' acts must be considered outside the appropriate limitation period, and the claims under section 1983 against them are hereby dismissed.

Oral Opinion No. 77-1531 Judge Barlow 3/6/78.

Next I look at the section 1983 claims leveled at defendant Stolowski. The acts allegedly committed by this defendant in violation of section 1983 are delineated in paragraphs 28, 31 and 32 of the complaint. These acts in paragraphs 28 and 31 allegedy occurred more than six years prior to the filing of the complaint in this case, and are therefore time-barred by New Jersey Statutes Annotated 2A:14-1.

In paragraph 32, the plaintiff alleges that Stolowski made false public statements concerning actions of the plaintiff. I find this allegation insufficient to state a cause of action under section 1983 and accordingly dismiss the action as to this defendant.

Lastly, I turn to the charges leveled at the defendant Anton. This defendant is charged in his capacity as Prosecutor of Ocean County with making a transcript of a criminal case unavailable for the [6] plaintiff's use. Prosecutors have been accorded broad immunity in section 1983 actions. *Imbler v. Pachtman*, 424 U.S. 409 (1976); *Jennings v. Shuman*, (3d Cir. slip opinion filed November 30, 1977). In light of our reading of the above cases, I find that Anton is entitled to immunity here. Accordingly, the action is dismissed as to this defendant under the Federal Rules of Civil Procedure 12(b)(6).

In light of the foregoing, accordingly the complaint must be dismissed as to all defendants in all respects.

Thank you, gentlemen.

MR. SAHRADNIK: For the record, the Statute of Limitations, the order does apply to William Burnham also?

THE COURT: Yes.

Oral Opinion No. 77-1531 Judge Barlow 3/6/78.

MR. HALL: Very briefly, I don't know if you mentioned the defendant Goldberg.

THE COURT: Submit an order.

MR. HARCAR: With prejudice?

THE COURT: Dismissal will be with prejudice.

MR. HARCAR: We had a motion also pending for reasonable attorneys' fees, which we feel—

THE COURT: I doubt I will grant that, but I will take it under advisement. There are still counterclaims involved in this case.

Pursuant to Section 753, Title 28, United States Code, the following transcript (illegible) an accurate record as (illegible) in the above entitled proceedings.

HELEN C. JOHNSON
Court Reporter

Order of Dismissal No. 77-1531,
Judge Barlow, March 16, 1978

MEMORANDUM DECISION,
UNITED STATES DISTRICT COURT,
DISTRICT FOR NEW JERSEY

UNITED STATES DISTRICT COURT
For the District of New Jersey

WESLEY K. BELL,

Plaintiff.

v.

STATE OF NEW JERSEY, *et al.*,

Defendants.

Civil Action No. 77-1531
Assigned to George H. Barlow, *U.S.D.J.*

This matter having been heard by the court upon the motions and applications of John J. Degnan, Attorney General of New Jersey, (Richard J. Harcar and Jeffrey M. Hall, Deputy Attorneys General, appearing), and Francis P. Piscal, Esquire, (John C. Sahradnik, Esquire, appearing), to dismiss the plaintiff's Complaint against defendants Dorothy Andres, Russell H. Mullen, John C. Kohl, Sidney Glaser, Clarence Pell, Vincent R. Stolowski, William Davidowski, David J. Goldberg, Alan Sagner, Joseph Cunningham, Martin Anton, and William Burnham, and Michael H. Malin, Esquire, of White and Williams appearing in opposition, and

Order of Dismissal No. 77-1531 Judge Barlow 3/16/78.

this court having considered said applications, motions, and arguments of counsel, and for good cause appearing,

IT IS, on this 16 day of March, 1978 ORDERED that the plaintiff's Complaint against the above-named defendants be dismissed with prejudice for the reasons stated in the court's oral opinion of March 6, 1978.

s/ GEORGE H. BARLOW, *U.S.D.J.*

Opinion of the Court, Third Circuit
No. 78-1578 January 24, 1979

UNITED STATES COURT OF APPEALS
For the Third Circuit

WESLEY K. BELL,

Appellant,

vs.

STATE OF NEW JERSEY c/o William F. Hyland, Attorney General of the State of N.J., State House, Trenton, New Jersey and DOROTHY ANDRES, RUSSELL H. MULLEN, JOHN C. KOHL, SIDNEY GLASER, CLARENCE PELL, VINCENT R. STOLOWSKI, WILLIAM DAVIDOWSKY, DAVID J. GOLDBERG, WILLIAM BURNHAM, MARTIN ANTON, ALAN SAGNER, JOSEPH CUNNINGHAM and NEW JERSEY DEPARTMENT OF TRANSPORTATION.

Appeal from the United States District Court
For the District of New Jersey

(D. C. Civil No. 77-1531)

Argued December 11, 1978

Before GIBBONS, VAN DUSEN and ROSENN,
Circuit Judges

(Opinion Filed January 24, 1979)

Michael H. Malin, Esq.,
David E. Sandel, Jr., Esq.,
White & Williams,
Philadelphia, Pa.,
Attorneys for Appellant

Francis P. Piscal, Esq.,
John C. Sahradnik, Esq.,
Berry, Summerill, Piscal, Kagan &
Privetera, Toms River, N.J.,
Attorneys for Appellees
Burnham and Anton

John J. Degnan, Attorney General
of New Jersey;
Erminie L. Conley, Assistant Attorney
General—Of Counsel
Jeffrey M. Hall and Richard J.
Harcar, Deputy Attorneys General
—On the Brief
Trenton, N. J.,
Attorneys for Appellees Andres,
Mullen, Kohl, Glaser, Pell,
Stolowski, Davidowsky, Goldberg,
Sagner and Cunningham

OPINION OF THE COURT.

PER CURIAM:

This appeal is from a district court order dismissing with prejudice the complaint of Wesley K. Bell, filed July 26, 1977. That complaint alleged a conspiracy among defendants to put plaintiff out of business, in violation of the Federal Civil Rights Acts (42 U. S. C. §§1983 and

1986), by instituting actions against properties owned by or leased to plaintiff in an area zoned commercial in order to deny him advertising permits, to remove his signs illegally and to condemn discriminatorily 38 of 39 properties owned or leased by him without taking similar action against neighboring and adjacent properties devoted to similar commercial use. The actions of which complaint was made were alleged to have occurred between 1968 and 1970.[1]

[1] The alleged unconstitutional and discriminatory actions of defendants against the plaintiff include the following:

(a) removal of duly licensed signs;

(b) Arbitrarily condemning plaintiff's roadside property while leaving similarly situated property of his competitors untouched;

(c) arbitrarily redefining the state's riparian interest over plaintiff's land;

(d) oppressively executing judgments upon the plaintiff so as to paralyze his assets and render him defenseless to pending legal proceedings;

(e) denying permits for spurious reasons, without notice or an opportunity to be heard, or denying them in effect, by refusing to consider the application;

(f) cancelling permits for arbitrary reasons and without notice or opportunity to be heard;

(g) removing plaintiff's signs without resort to appropriate state procedures;

(h) engaging in false swearings before various state tribunals;

(i) engaging in a campaign of public defamation;

(j) pursuing a campaign of criminal prosecution against plaintiff for violation of various laws, while disregarding similar conduct by plaintiff's competitors;

(k) invoking the Highway Beautification Act in support of takings, where such takings are not eligible for the use of funds under the acts and diverting such funds for the purpose of harassing the plaintiff and destroying his business; and

(l) withholding from the plaintiff critical legal evidence in violation of state statutory and federal constitutional law.

(Footnote continued on following page.)

After filing in September 1977 an answer and counterclaim, the individual defendants, except for Anton and Burnham, filed in November 1977 a motion to strike their answer and counterclaim, which the court granted on November 21, 1977. Defendants Anton and Burnham separately filed answers and counterclaims in September and October 1977. The state defendants filed on February 15, 1978, a motion to dismiss the complaint.[2] In March 1978 defendants Anton and Burnham also filed a motion to dismiss the complaint. On March 2, 1978, the plaintiff filed a first amended complaint without permission of the court or consent of the defendants.

After argument, the court dismissed the complaint as to all remaining defendants on March 6, 1978,[3] stating that the dismissal was with prejudice and that it need not consider the first amended complaint filed four days before on March 2, 1978.

(Footnote continued from preceding page.)

Jurisdiction was based on 28 U. S. C. §§1331 and 1343. The jurisdictional paragraph of the first amended complaint alleged action in violation of 42 U. S. C. §1985(3), as well as 42 U. S. C. §§1983 and 1986. We assume, without deciding, that the amended complaint was effective as to all defendants remaining in the case on March 2, 1978, when it was filed.

[2] As a result of motions filed in October 1977, the complaint was dismissed in December 1977 as to the New Jersey Department of Transportation and the State of New Jersey.

[3] The court read from the bench its oral opinion in support of its oral order dismissing the complaint and directed counsel to submit a written order, which was filed on March 16, 1978. The court stated various reasons for its action (206a-209a).

We affirm the district court judgment because our review of the initial complaint and the first amended complaint shows that the applicable statutes of limitation require such dismissal of the claims under 42 U. S. C. §§1983 and 1986.

I. The applicable statutes of limitations

Since this action arises under the Civil Rights Acts of the United States, the federal statute of limitations controls where there is such a statutory limitation period provided for in the applicable Civil Rights Act. See *Holmberg v. Armbrecht*, 327 U. S. 392 (1946). 42 U. S. C. §1986 contains a one-year statute of limitations; thus it is clear that the district court order was correct in dismissing the claim under that section of Chapter 21, Title 42, containing the federal statutes on civil rights.

As to the claims under 42 U. S. C. §§1983 and 1985(3), the period of limitation "to be applied is that which would be applicable in the courts of the state in which the federal court is sitting had an action seeking similar relief been brought under state law." *Polite v. Diehl*, 507 F.2d 119, 122-23 (3d Cir. 1974). See also *Jennings v. Shuman*, 567 F.2d 1213, 1216 (3d Cir. 1977).

We agree with the district court that the New Jersey six-year statute of limitations for malicious interference with business contained in N.J.S.A. 2A:14-1 applies to the claim under 42 U. S. C. §§1983 and 1985(3).

II. The failure to allege with particularity events occurring within the statutory period which support the alleged causes of action

Those events within the compass of the Civil Rights Acts which plaintiff alleged in his initial complaint took place on or before March 2, 1970, when *W. Kingsley v. Wes Outdoor Advertising Co.*, 55 N.J. 336 (1970), was concluded.[4] These events fall outside the limitations period, and thus the initial complaint was time-barred.

The amended complaint did not cure this defect. This court has consistently held that conclusory allegations without supporting facts are not sufficient to make out a complaint under the Civil Rights Acts (particularly 42 U. S. C. §§1983, 1985 & 1986). See *Curtis v. Everette*, 489 F.2d 516, 521 (3d Cir. 1973), and cases there cited. Therefore, allegations in the first amended complaint that the state has "delayed and procrastinated" in taking action from "1968 to date" or "1972 to present" (58a) are insufficient without allegations of the act, with dates, of which complaint is made.

---

[4] The purported defamation by defendant Stolowski in February 1976 is an allegation not covered by 42 U. S. C. §1893, since Stolowski was not acting under color of state law at that time. See *United States v. Classic*, 313 U. S. 299, 326 (1940); *Sykes v. State of California (Dept. of Motor Vehicles)*, 497 F.2d 197 (9th Cir. 1974). By 1976, responsibility for regulation and enforcement of outdoor advertising in New Jersey had been transferred to the New Jersey Department of Transportation, whereas it is conceded that Stolowski continued as an employee of the Division of Taxation, Department of the Treasury. See N.J.S.A. 27:1A-52 (7a and 45a).

III. The failure to allege fraud in the concealment of the causes of action with particularity

Plaintiff also invokes the equitable doctrine that fraudulent concealment of material facts tolls the running of the statute of limitations, in support of his contentions that his claims are not time-barred. *See, e. g., Holmberg v. Armbrecht*, 327 U.S. at 397.

In paragraph 39 of the initial complaint plaintiff alleges (19a):

> "The defendants have engaged in a fraudulent concealment of the facts relative to the conspiracy."

In paragraph 38 of the amended complaint, plaintiff alleges (62a):

> "By reason of the destruction of public records, and the costly, dilatory and frivolous litigation of matters under the New Jersey Right-to-Know Act, the individual defendants have conspired to fraudulently conceal from plaintiff all of the foregoing facts."

F. R. Civ. P. 9(b) provides that "[i]n all averments of fraud . . . the circumstances constituting fraud . . . shall be stated with particularity." In *Suckow Borax Mines Consol. v. Borax Consolidated*, 185 F.2d 196, 209 (9th Cir. 1950), the court stated that a "bare allegation of 'fraudulent concealment' is but a conclusion of law which falls far short of the particularity of statement required by Rule 9(b)." Thus the federal courts have made clear that a plaintiff relying on fraudulent concealment to overcome the bar of the statute of limitations must specify

> ". . . how, when and what manner [the fraudulent concealment] was perpetrated. And especially must

> there be distinct averments as to the time when the fraud, mistake, concealment, or misrepresentation was discovered, and what the discovery is, so that the court may clearly see, whether, by the exercise of ordinary diligence, the discovery might not have been before made."

Stearns, Admr. v. Page, 48 U.S. (7 Howard) 818, 829 (1849). In *Rutledge v. Boston Woven Hose & Rubber Co.*, 576 F.2d 248 (9th Cir. 1978), the court delineated the following standard for pleading fraudulent concealment:

> "[Plaintiff] had the burden of both pleading and ultimately proving fraudulent concealment. To carry that burden, he had to plead facts showing that [defendant] actively misled him, that he had neither actual nor constructive knowledge of the facts constituting his claim for relief despite his diligence in trying to discover the pertinent facts."

Id. at 249-50. Similarly, in *Charlotte Telecasters v. Jefferson Pilot Corp.*, 546 F.2d 570 (4th Cir. 1976), the court stated that the facts necessary to show the following elements must be distinctly pleaded:

> ". . . '(1) fraudulent concealment by the party raising the statute together with (2) the other party's failure to discover the facts which are the basis of his cause of action despite (3) the exercise of due diligence on his part.' "

Id. at 574. See also *Prather v. Neva Paperbacks, Inc.*, 446 F.2d 338, 340 (5th Cir. 1971); *Moviecolor Ltd. v. Eastman Kodak Co.*, 288 F.2d 80, 88 (2d Cir. 1961); *Fitzgerald v. Seamans*, 384 F.Supp. 688, 693 (D. D.C. 1974), *aff'd & remanded on other grounds*, 553 F.2d 520 (D.C. Cir. 1977).

Measured against the standards set forth in the above decisions, plaintiff's initial and first amended complaints are both deficient, for the pleadings reveal no allegations relating to plaintiff's "failure to discover the facts which are the basis of his cause of action." It is the overt acts of the alleged conspirators, not the conspiracy itself, which are the basis of a cause of action under the Civil Rights Acts; "the conspiracy itself is not a cause of action without overt acts . . . ." *Hoffman v. Halden*, 268 F.2d 280, 295 (9th Cir. 1959). Plaintiff alleges overt acts, but not his ignorance of them.[5] The most liberal reading of paragraph 38 of the amended complaint, *supra*, yields at best an implication that plaintiff failed to discover a conspiracy, as opposed to overt acts.[6] A less strained reading indicates that plaintiff asserts only a concealment of potential evidence, the remedy for which would have been available in the federal discovery procedures, after *timely* filing of a civil rights action.

---

[5] Paragraph 36 of the amended complaint details acts which include tearing down of signs, condemnation of property, taking of property, impounding of assets, withdrawal and denial of permits, public defamation, criminal prosecution, and withholding of legal evidence (59a-62a). It is difficult to conceive how plaintiff plausibly could have alleged ignorance of these acts, since he would have felt the deprivation of his claimed rights as soon as such acts were perpetrated.

[6] We leave for another day a complaint, charging action by one state official, which contains allegations with particularity that such a defendant fraudulently concealed that he had conspired with other co-defendants.

Since we rule that the first amended complaint was also time-barred, we need not consider whether the district court was required to permit that amendment pursuant to F. R. Civ. P. 15(a) at so late a date in the proceedings. See note 2 above.

The judgment of the district court will be affirmed.

TO THE CLERK: Please file the foregoing opinion.

_____

Circuit Judge

Opinion of the Court, Third Circuit No. 78-1578.

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 78-1578

WESLEY K. BELL,

Appellant,

vs.

STATE OF NEW JERSEY c/o William F. Hyland, Attorney General of the State of N.J. State House, Trenton, New Jersey and DOROTHY ANDRES, RUSSELL H. MULLEN, JOHN C. KOHL, SIDNEY GLASER, CLARENCE PELL, VINCENT R. STOLOWSKI, WILLIAM DAVIDOWSKY, DAVID J. GOLDBERG, WILLIAM BURNHAM, MARTIN ANTON, ALAN SAGNER, JOSEPH CUNNINGHAM and NEW JERSEY DEPARTMENT OF TRANSPORTATION.

(D.C. Civil No. 77-1531)

On Appeal from the United States District Court
For the — District of New Jersey

Present: GIBBONS, VAN DUSEN and ROSENN,
Circuit Judges

Opinion of the Court, Third Circuit No. 78-1578.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the — District of New Jersey and was argued by counsel on December 11, 1978.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, filed March 15, 1978 be, and the same is hereby affirmed. Costs taxed against appellant.

ATTEST:

THOMAS (illegible)
Clerk

January 24, 1979

Denial—U. S. Supreme Court, No. 78-1554
October 1, 1979

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

October 1, 1979

Mr. Wesley K. Bell
188 Route 72
Manahawkin, NJ 08050

Re: Wesley K. Bell v. New Jersey, et al. 78-1554

Dear Mr. Bell:

The Court today denied the petition for rehearing in the above-entitled case.

Very Truly yours,

MICHAEL RODAK, JR., Clerk

By (Illegible)

cc: Thomas F. Quinn, Esq. (Your No. 78-1578)
Clerk, U.S. Court of Appeals—3d Circuit

Jeffrey M. Hall, Esq.
Deputy Attorney General

Franklin H. Berry, Jr., Esquire
Berry, Summerill, Piscal, et al.

Partial Dismissal, No. 80-531,
Judge Ackerman, June 2, 1980

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 80-531

WESLEY K. BELL, Individually and d/b/a
WES OUTDOOR ADVERTISING CO.,

Plaintiff,

v.

STATE OF NEW JERSEY, BRENDAN T. BYRNE, LOUIS J. GAMBACCINI, JOHN J. DEGNAN, DOROTHY ANDRES, RUSSELL H. MULLEN, CLARENCE PELL, VINCENT R. STOLOWSKI, WILLIAM DAVIDOWSKY, WILLIAM BURNHAM, JOSEPH CUNNINGHAM, ALAN SAGNER, and NEW JERSEY DEPARTMENT OF TRANSPORTATION, an agency of the State of New Jersey,

Defendants.

ORDER PARTIALLY DISMISSING COMPLAINT AND REQUIRING MORE SPECIFIC STATEMENTS

This matter being opened to the Court on the motion of John J. Degnan, Attorney General of New Jersey, Richard J. Harcar, Esq., and Nickolas F. Monteforte, Esq., Deputy Attorneys General, appearing on behalf of

Partial Dismissal No. 80-531 Judge Ackerman.

all defendants except William Burnham and Clinton E. Cronin, Esq., appearing on behalf of the plaintiff, and the Court having considered the affidavits and briefs on file and having heard the argument of counsel, and there being good and sufficient reason, therefore,

IT IS on this 2nd day of June 1980, ORDERED:

1. All aspects of the plaintiff's complaint which allege violations of 42 U.S.C. §1985(3) and 1986 are dismissed with prejudice as to all defendants.

2. All aspects of the plaintiff's complaint alleging violations of 42 U.S.C. 1983 are dismissed with prejudice as to defendants Davidowski, Burnham, Byrne, and Gambaccini, Pell, Mullen, Cunningham, and Stolowski.

3. All aspects of the plaintiff's complaint alleging violations of 42 U.S.C. 1983 are dismissed with prejudice as to defendant John J. Degnan, except for the allegations set forth in paragraph 20 of the complaint. Plaintiff is hereby ordered to file an amended complaint containing a more specific statement as to the allegations of this paragraph as they pertain to this defendant.

4. All aspects of the plaintiff's complaint alleging violations of 42 U.S.C. 1983 are dismissed with prejudice as to the defendants, State of New Jersey and New Jersey Department of Transportation insofar as they seek money damages.

5. All aspects of the plaintiff's complaint alleging violations of 42 U.S.C. §1983 are dismissed with prejudice as to the defendant State of New Jersey insofar as they seek injunctive relief, except for the

allegations set forth in paragraph 52. Plaintiff is hereby ordered to file an amended complaint containing a more specific statement as to the allegations of this paragraph as they pertain to this defendant.

6. All aspects of plaintiff's complaint alleging violations of 42 U.S.C. §1983 are dismissed with prejudice as to the defendant New Jersey Department of Transportation insofar as they seek injunctive relief, except for the allegations contained in paragraphs 52 and 56. Plaintiff is hereby ordered to file an amended complaint containing a more specific statement as to the allegations contained in paragraphs 52 and 56 as they pertain to this defendant.

7. All allegations of the plaintiff's complaint alleging violations of 42 U.S.C. §1983 are dismissed with prejudice as to the defendant Dorothy Andres, except for the allegations contained in paragraphs 28 and 41. Plaintiff is hereby ordered to file an amended complaint containing a more specific statement as to the allegations contained in these paragraphs as they pertain to this defendant.

8. The amendments to the plaintiff's complaint required by this order are to be filed with this court on or before June 12, 1980. If said amended complaint is not filed by this date, any portion of plaintiff's action remaining as of the entry of this order will be automatically dismissed with prejudice.

s/ _____

Harold Ackerman, U.S.D.C.

Complaint, No. 80-531, February 26, 1980

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In The
UNITED STATES DISTRICT COURT
For
THE DISTRICT OF NEW JERSEY

CIVIL ACTION NO.
#80-531

WESLEY K. BELL, Individually and d/b/a
WES OUTDOOR ADVERTISING CO.,

Plaintiff,

vs.

STATE OF NEW JERSEY, BRENDAN T. BRYNE, LOUIS J. GAMBACCINI, JOHN J. DEGNAN, DOROTHY ANDRES, RUSSELL H. MULLEN, CLARENCE PELL, VINCENT R. STOLOWSKI, WILLIAM DAVIDOWSKY, WILLIAM BURNHAM, JOSEPH CUNNINGHAM, ALAN SAGNER, and NEW JERSEY DEPARTMENT OF TRANSPORTATION, an agency of the State of New Jersey,

Defendants.

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DEMAND FOR JURY TRIAL

Plaintiff, WESLEY K. BELL, individually and doing business as Wes Outdoor Advertising Co., brings this civil action, seeking preliminary and permanent injunctive relief, declaratory judgment and monetary damages, etc., against the captioned defendants, and complains and alleges as follows:

PLAINTIFF

1. Plaintiff, WESLEY K. BELL, is an individual residing at 188 State Highway 72, Manahawkin, Stafford Township, Ocean County, New Jersey, engaged in the outdoor advertising business, and doing business as Wes Outdoor Advertising Co., in the State of New Jersey since 1957.

DEFENDANTS

2. Defendant, STATE OF NEW JERSEY, is a State of the United States, with its capital and its principal place of business located for purposes of service of process at the Office of the New Jersey Attorney General, John J. Degnan, State House Annex, Trenton, New Jersey.

3. Defendant, BRENDAN T. BRYNE, is the governor of the State of New Jersey with offices at the State House, Trenton, New Jersey, and resides at Morven, Princeton, New Jersey.

4. Defendant, LOUIS J. GAMBACCINI, is the present New Jersey Commissioner of Transportation with offices at 1035 Parkway Avenue, Trenton, New Jersey.

5. Defendant, JOHN J. DEGNAN, is the Attorney General of the State of New Jersey and may be served at the State House Annex, Trenton, New Jersey.

6. Defendant, DOROTHY ANDRES, is the Executive Director, Outdoor Advertising Bureau, New Jersey Department of Transportation and an employee of that Department with an office at 1035 Parkway Avenue, Trenton, New Jersey.

7. Defendant, RUSSELL H. MULLEN, is an employee of the New Jersey Department of Transportation with an office at 1035 Parkway Avenue, Trenton, New Jersey.

8. Defendant, CLARENCE PELL, is an employee of the New Jersey Department of Transportation with an office at 1035 Parkway Avenue, Trenton, New Jersey.

9. Defendant, VINCENT R. STOLOWSKI, is an employee of the New Jersey Division of Taxation, with an office at W. State Street and Willow Street, Trenton, New Jersey.

10. Defendant, WILLIAM DAVIDOWSKY, is an employee of the New Jersey Department of Transportation with an office at 1035 Parkway Avenue, Trenton, New Jersey.

11. Defendant, WILLIAM BURNHAM, is a former Zoning Officer of Stafford Township, and resides at 45 Division Street, Manahawkin, Stafford Township, New Jersey.

12. Defendant, JOSEPH CUNNINGHAM, is an employee of the New Jersey Department of Transportation with an office at 1035 Parkway Avenue, Trenton, New Jersey.

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13. Defendant, ALAN SAGNER, is a former Commissioner of the New Jersey Department of Transportation and resides at 2 Crest Circle in the Village of South Orange, County of Essex, State of New Jersey.

14. Defendant, NEW JERSEY DEPARTMENT OF TRANSPORTATION, has offices at 1035 Parkway Avenue, Trenton, New Jersey, and is an agency of the State of New Jersey.

FIRST COUNT

JURISDICTION

15. This FIRST COUNT of the Complaint is brought by Plaintiff, seeking declarative and injunctive relief, temporary and permanent, for violation, by the named-defendants, acting under color of law, of the Civil Rights Act of 1964, 42 U.S.C. Section 1983, 1985 (3) and 1986 and for violation of and for conspiracy to violate the Due Process and Equal Protection provisions of the Fifth and Fourteenth Amendments of the United States Constitution and for violation of and interference with and for conspiracy to violate and interfere with plaintiff's right of full exercise of his Constitution rights secured to him by the Constitution and Laws of the United States and subjecting plaintiff to a deprivation of protected rights, privileges and immunities to which he is entitled and further for neglecting and failing to provent or aid in preventing the wrongful acts complained of. Jurisdiction is conferred on this Court pursuant to 28 U.S. Code, Sections 1331 and 1343.

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16. Plaintiff, a citizen of New Jersey and of the United States has been, since 1957, and is, in the outdoor advertising business, in Ocean County, New Jersey. The plaintiff was and is, active in local politics, is presently the Democratic Mayor of Stafford Township, has run for the Democratic nomination for U.S. Senate once; for U.S. House of Representatives, once; for the New Jersey State Senate twice; and for the New Jersey State Assembly in 1979. He was also owner and Publisher/Editor of a weekly newspaper in 1963 and 1964, in Manahawkin, Stafford Township, New Jersey.

17. Defendant New Jersey Department of Transportation and all other defendants named in paragraphs numbered 2 through 14 of the Complaint, acting under color of law, to wit the Federal Highway Beautification Act and amendments thereto and various New Jersey Statutes hereinafter referred to; have in the past and continue now to engage in acts and practices constituting a pattern and practice of discrimination and a denial of equal protection due to plaintiff and an interference with plaintiff's full exercise of rights secured by the Constitution. Such acts to violate plaintiff's protected rights commencing in 1968 and continuing through February 1980 include:

(a) removal of duty licensed signs:

(b) arbitrarily condemning plaintiff's roadside property while leaving similarly situated property of his competitors untouched:

(c) arbitrarily redefining the state's riparian interest over plaintiff's land:

(d) oppressively executing judgments upon the plaintiff so as to paralyze his assets and render him defensless to pending legal proceedings:

(e) denying permits for spurious reasons, without notice or opportunity to be heard, or denying them in effect, by refusing to consider the application:

(f) cancelling permits for arbitrary reasons and without notice or opportunity to be heard:

(g) removing plaintiff's signs without resort to appropriate state procedures:

(h) engaging in false swearing before various state tribunals:

(i) engaging in a campaign of public defamation:

(j) pursuing a campaign of criminal prosecution against plaintiff for violation of various laws, while disregarding similar conduct by various plaintiff's competitors:

(k) invoking the Federal Highway Beautification Act in support of takings, where such takings are not eligible for the use of funds under the acts and diverting such funds for the purpose of harassing the plaintiff and interfering with the exercise of his protected rights:

(l) withholding from the plaintiff critical legal evidence in violation of state statutory and federal constitutional law.

(m) seeking additional funds through promoting and supporting state bonding and state legislation in order to engage in further taking of land of plaintiff and their further violation and interfering with plaintiff's protected rights.

(n) threatening to remove additional signs and threatening to condemn further properties and violating plaintiff's rights.

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18. Plaintiff, since 1968 has owned, leased or otherwise had and/or has an interest in real estate along the roadway of State Highway 72, Manahawkin, Stafford Township, Ocean County, New Jersey between Route 9 and the Barnegat Bay, as well as elsewhere on Route 72.

19. Such area is and has been zoned commercial and thus not land having the benefit of Federal Funding for acquisition by the State under the Federal Highway Beautification Act.

20. During the period of 1968 to February 20, 1980 the defendant New Jersey Department of Transportation has condemned, and does threaten to condemn Plaintiff's properties. As recently as February, 1980 defendant New Jersey Transportation Department through a letter from his attorney, defendant John J. Degnan, has placed a date of February 29, 1980 when it will destroy plaintiff's signs at plaintiff's expense and will commence further condemnation hearings, despite the fact that a hearing being conducted by the defendant New Jersey Department of Transportation as to those very issues, *i.e.*, ownership of land and removal of signs, was adjourned in January, 1979 at defendant's request and has never been resumed or completed, thus denying and attempting to deny due process to plaintiff.

21. During the period of 1968 to February, 1980 Defendants have invoked such New Jersey statutes as N.J.S.A. 27:1-1 *et seq*; 20:1-1; 27:7A-1; 27:7-22.2 and others against the plaintiff and during the same period while defendant was condemning 38 of 39 properties owned or leased by plaintiff, condemned only one property of plaintiff's competitor Herbert L. Shapiro

d/b/a Jersey Shore Lagoon Properties and only one of 14 signs of another business competitor, Tooker Outdoor Advertising.

22. Defendant, New Jersey Department of Transportation and defendant officers and employees of defendant Department of Transportation extended areas of taking of land along Route 72 in Manahawkin, New Jersey on December 5, 1968 and continued to extend taking in 1979, by incorporating $490,017.00 in a multimillion dollar Bond Referendum, classified only as "Improvements to State Highways". Ocean County voters rejected the question but Statewide, the question passed. Said sum of $490,017.00 was caused to be included in said Bond referendum by defendants purposely and/or solely to finance further discriminatory takings of plaintiff's lands or lands in which he has or had an interest, adjacent to Route 72 between the Garden State Parkway and Long Beach Island, New Jersey. Defendants Gambaccini and the other New Jersey Department of Transportation employee defendants, further in 1979 and in January and February of 1980 did cause a legislative bill in the New Jersey Senate, authorizing expenditures from said bond issue to include monies for "scenic lands acquisition", but only for Route 72 between Route 9 to Barnegat Bay (Long Beach Island). Such provisions, not affecting any other area or roadway in the State were directed by the defendants, purposefully and/or solely against the plaintiff to injure the plaintiff and to deny him equal protection of the law and to interfer with his full exercise of his protected rights.

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23. The plaintiff, on May 20, 1977 delivered to defendant, New Jersey Transportation Commissioner, defendant Alan Sagner, a detailed map and transcripts and other documents, for his review in an effort to have him put a halt to the continuing violation of plaintiff's rights. Defendant, Alan Sagner reviewed the materials and his executive secretary released them back to the plaintiff on June 9, 1977 and since that time and until defendant left that office, said defendant, Alan Sagner negligently took no action. Such inaction was done to intentionally, purposefully, wrongfully and vindictively violate plaintiff's constitutional and civil rights and to allow the other defendants' wrongful acts to continue.

24. On June 9, 1977, plaintiff delivered to defendant Governor Brendan Byrne's Office, detailed maps, transcripts and other documents for the Governor's review in an effort to put a halt to the wrongful acts and continuing conspiracy. On or about July 19, 1977, the then chief legal aid to the Governor, met with the plaintiff and released materials held by the Governor's Office and after a short discussion, said that the Governor would take no action. This was done for the purpose of intentionally, purposefully, wrongfully and vindictively violating Plaintiff's constitutional and civil rights and to allow the other defendants' wrongful acts to continue.

25. A report by the Federal Department of Transportation, dated December 31, 1978, released the fact, well-known to defendants, that New Jersey has a "Zero" compliance under the Highway Beautification Act, which Federal act had been and is now being utilized by defendants, against the plaintiff only and no

others within the State of New Jersey, intentionally, purposefully, wrongfully and vindictively to violate plaintiff's constitutional and civil rights.

26. During the period of October 1979 through February 28, 1980, the defendant, New Jersey Commissioner of Transportation, Louis J. Gambaccini, having the power to do so, nevertheless denied a written request by plaintiff to halt the discriminatory actions by defendants against plaintiff and to appoint a disinterested person to personally examine the entire matter and make recommendations to resolve the matter and to prevent the continuance of the actions of the other defendants. In denying plaintiff's request the defendant, Louis J. Gambaccini, wilfully and negligently failed and refused to stop or attempt to stop the wrongful acts complained of and further in January, 1980 did negligently accept advice from certain of the other defendants to the effect that he should not exercise his power and authority in plaintiff's matters as there was Court litigation pending, when in fact, if he had exercised reasonable diligence and made the proper inquiry, he would have learned that at that time there was no litigation pending involving plaintiff.

27. The defendant Department of Transportation in the year 1976 issued permits for an overhead electric high-tension transmission line along the new Route 72. This line, which presently exists and is in use, it is alleged, destroys any possibility or likelihood of scenic enhancement or preservation of scenic beauty, as required by the Federal Beautification Funding Act. The defendant New Jersey Department of Transportation and the other defendants by permitting and authorizing

this construction, destroyed any scenic beauty which it stated is the purpose of the Federal Highway Beautification Act, *i.e.*, to preserve and enhance scenic beauty. Thus, it is alleged that the condemnation of Plaintiff's property on Route 72 constitutes a misuse and misappropriation of such Federal funds for the purpose of eliminating plaintiff as a competitior of certain politically favored individuals and more importantly to deny to plaintiff the full exercise of rights guaranteed and secured by the U. S. Constitution.

28. Defendant, Dorothy Andres, on November 13, 1979, marked void on a certified check in the amount of $210.00 and returned same with pending applications for advertising permits, to plaintiff's attorney, without acting on them, as required by law, with the intention and purpose of denying plaintiff his procedural due process, and his right of appeal and hearing thereon.

29. Plaintiff has sought relief continually since 1968, and to the present date, administratively and in the courts and has engaged in suits and countersuits, expending over $100,000.00 in legal fees, etc., in an attempt to secure his rights and to have plaintiff's case heard on the merits. The defendants have continually and successfully prevented the plaintiff from having his case heard on its merits and intentionally purposefully, wrongfully and vindictively have continued to violate plaintiff's constitutional and civil rights. The plaintiff continues to forcefully and adversely maintain possession of all properties and billboards on Route 72, in Manahawkin, Stafford Township, which are referred to in this suit.

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30. The defendants have continually engaged in discriminatory and arbitrary condemnations of property owned or leased by plaintiff, and have denied advertising permits to plaintiff beginning in February of 1968 and as recent as February, 1980. Defendants acted and are acting under color of State statutes and department regulations, ordinances, customs and usages. As previously alleged, a hearing as to all parcels of land and advertising permits was begun in January 1979. Said hearing was continued and now 13 months later it still has not been concluded. Despite the fact of the hearing not being concluded, defendants have threatened and are threatening to destroy, at plaintiff's expense, all of his billboards, by February 29, 1980, along Route 72 between Route 9 and Long Beach Island in Manahawkin, the very subjects of January, 1979 uncompleted administrative hearing.

31. In 1974, the defendant Department of Transportation through the defendant employees of the said Department altered or caused to be altered the survey maps and parcel maps identified as Route 72, Section 8, for the purpose of changing property lines so as to force the removal of the three large billboards owned by the plaintiff.

32. On May 29, 1968, New Jersey Superior Court Docket No. L-139680-68 P.W., the defendant State of New Jersey and defendant Department of Transportation and the defendant employees of that department restrained the plaintiff from removing trees and erecting signs on the plaintiff's properties on Route 72. However, the defendants took no action and continued to the present date to take no action against the erection of similar signs by plaintiff's advertising sign competitors

and others, on numerous parcels adjacent to or nearby those owned by plaintiff.

33. In a hearing concerning the matter complained of in paragraph 32 above, the defendant, Clarence Pell filed an affidavit, dated May 28, 1968, stating that the defendant, New Jersey Department of Transportation intended to further condemn certain parcels on Route 72, including certain gasoline stations. At the time the affidavit was filed, defendant Pell, along with the other defendants, had no intention whatsoever of condemning or recommending condemnation of said gasoline stations or of their signs. At a later date, defendant Pell and certain of the other defendants caused the elimination of those same gasoline stations' properties from the condemnation maps. Contrary to defendant Pell's sworn representation to the court, the defendant, New Jersey Department of Transportation has never taken any action to condemn these neighboring and adjacent parcels and in fact other businesses with their signs, have been permitted by defendants to be erected and operated along with their outdoor advertising signs along the Route 72 roadway in Stafford Township, New Jersey.

34. Defendant, New Jersey Department of Transportation and the other defendants have continued to permit destruction of vegetation, including large trees, on the parcels owned by persons other than plaintiff, which parcels have been designated on the defendants parcel-taking maps as earmarked for so-called beautification takings. Such destruction by commercial developers such as Herbert Shapiro d/b/a Jersey Shore Lagoon Properties, Lincoln Property Co. and others has continued to be permitted from 1968 through December,

1979, when extensive cutting of full-grown trees was allowed. Construction of numerous commercial establishments has continued up to and including 1979, such businesses as McDonalds, car dealers, gas stations, etc., while New Jersey Department of Transportation and the other defendants have continued to press discriminatory takings against the plaintiff alone.

35. On February 16, 1969, a conference was held by the Deputy Commissioner of Transportation, defendant Russell H. Mullen, defendant Joseph Cunningham, and one Mr. Blauss (first name unknown) and other unknown employees of the defendant Department of Transportation, with officials of Stafford Township, a municipality of New Jersey. During the course of the meeting, both, defendant Mullen and Defendant Cunningham agreed that the proposed right-of-way for beautification purposes could and should be limited to a depth of 60 feet rather than a depth of 100 feet. Nevertheless, it was agreed by them to proceed with condemnation proceedings against plaintiff to a depth of 100 feet. Defendant Mullen took the position that as soon as "the problems" with plaintiff had been resolved, the condemnation proceedings would be amended so that the defendant Department of Transportation would take only 60 feet rather than 100 feet, as shown on the plans and maps of defendant Department of Transportation. The aforesaid meeting made it clear that property along Route 72 would be taken to greater depths than 60 feet until plaintiff Bell was eliminated and his property taken so that he could not erect signs. Defendants then would take lesser depths of remaining properties so as not to prevent others from erecting signs close to the roadway of Route 72. Defendant Cunningham and defendant

Mullen also stated that the Department of Transportation was not committed to a 100 foot right-of-way, and in some instances might agree to even less than 60 feet; however said defendant then continued and do continue to enforce a 100 foot to a 1000 depth foot right-of-way against plaintiff only.

36. Defendant, Vincent R. Stolowski, of the Department of Taxation, since 1968 has been instrumental in causing the institution of proceedings against the plaintiff and has continued to harass the plaintiff for the purpose of denying him his Fifth and Fourteenth Amendment rights and his lawful enjoyment of his property. Defendant Stolowski with the purpose of injurying the plaintiff, falsely testified in the presence of plaintiff in 1969 that there were no billboards on Highway 72 in Stafford Township, other than plaintiff's between Route 9 and Barnegat Bay. As a result of these proceedings, the State of New Jersey in 1969 obtained a judgment against the plaintiff in excess of $59,000.00 (later reduced). A criminal case against defendant Stolowski was however, dismissed and the transcript of his original false testimony was first impounded by the then Ocean County Prosecutor and then was never made available to plaintiff despite continuing demands (it was alleged to have been lost).

37. After obtaining the aforesaid judgment through said false testimony, the defendant State of New Jersey at the behest of the other defendants levied on all assets and contractual incomes of the plaintiff and his company. The defendant State of New Jersey then instituted an accelerated campaign of Court procedures through condemnations and various other agencies. This

campaign was a calculated effort to destroy plaintiff's financial resources and thus, as a practical matter, deny him his right to counsel and expert witnesses needed in condemnation matters and other actions. This campaign denied plaintiff his right to a fair trial in both civil and criminal matters as guaranteed by the Fifth Amendment to the United States Constitution, and was undertaken with the intent and purpose of denying plaintiff such right. The levy, made in 1969, is still in effect, though the judgment has been paid by plaintiff. By continuing the levy in effect, the defendants have made it difficult for plaintiff to collect his accounts, and have otherwise injured the plaintiff in the enjoyment and exercise of his Constitutional rights.

38. The State of New Jersey has, since 1968 taken possession of various properties without giving the plaintiff an opportunity to defend his rights and properties and has retarded the growth of his business, all to his severe financial detriment and to the detriment of his future income potential. In all but two of the State's condemnation actions, plaintiff was forced, by financial circumstances, to suffer default judgment. In the two cases plaintiff defended on September 17, 1971, Docket No. L-22676-70 and on July 7, 1971, Docket No. L-22698-70, plaintiff was finally able to afford and did obtain an expert witness for valuation purposes, but defendants' objection to a postponement until the plaintiff's valuation witness could return from vacation resulted in a court refusal of a postponement, resulting in plaintiff being unable to have an expert testify and causing injury to plaintiff and interference with plaintiff's exercise of rights guaranteed to him by the U.S. Constitution including his right to due process.

Plaintiff has refused to accept any of the meager condemnation awards made in the aforesaid proceedings.

39. On November 8, 1977, the defendant New Jersey Department of Transportation and the other defendants again attempted to injure plaintiff in the exercise of his Constitutional rights by threatening by letter to remove and destroy one of the plaintiff's signs by falsely alleging that said sign encroached on Route 72, while knowing that said allegation was false.

40. In December 1979 and/or January 1980 the defendant employees of New Jersey Division of Transportation falsely advised the defendant, Commissioner Louis J. Gambaccini, concerning their handling of the plaintiff's matter and further advised him that he should not appoint a disinterested member of his office to review the past actions of defendant employees of the New Jersey Department of Transportation and further advised him that the matter was still "in Court", which it was not at that time.

41. In November-December, 1979, defendant Andres, in continuance of the conspiracy refused to accept applications from plaintiff for sign permits and did order signs removed as an encroachment on a State right-of-way, full knowing that the matter was resolved favorably to the plaintiff and against the New Jersey Department of Transportation in a 1968 court case.

42. Defendant, Dorothy Andres and the other defendants, knowing that the area in which plaintiff's signs are located is lawfully zoned commercial and under the applicable Federal Law, is exempted from the Highway Beautification Act, have nevertheless acted and are presently (1980) acting, under color of law to utilize

said federal funds as well as State land funds to injure the plaintiff by initiating and continuing actions including removal of signs, condemnations, etc., and to otherwise deny and interfere with plaintiff's exercise of his protected rights.

43. As further evidence of the malicious intent of defendant Vincent Stolowski, in June of 1969, defendant posted a photograph of the plaintiff on the bulletin board in the State office where he is employed with the caption, "Public Enemy Number One" affixed to it.

44. As further evidence of his malicious intent, defendant Stolowski, in 1967, made public statements falsely accusing plaintiff of erecting signs actually erected by plaintiff's competition. Defendant Stolowski again did so on or about February 2, 1976, in an interview published in the Manahawkin Beacon newspaper knowing such lands he described were the property of Herbert Shapiro, one of plaintiff's competitors, for the express purpose of publicly defaming plaintiff and causing injury to the plaintiff and interfering with the plaintiff's exercise of his Constitutional rights, including his right of privacy.

45. Defendants State of New Jersey and Defendants New Jersey Department of Transportation, by its Division of Outdoor Advertising on March 28, 1969, by letter of defendant Vincent Stolowski ordered plaintiff to remove every sign and billboard owned by the plaintiff within the State of New Jersey and further ordered that otherwise they would be removed by the State, and the cost billed to the plaintiff. The defendant State of New Jersey again, on February, 1976 by letter from defendant Department of Transportation ordered that all of the

plaintiff's signs in the State of New Jersey be removed, or they would be summarily removed at plaintiff's expense, by the State of New Jersey on April 1, 1976 unless the Plaintiff paid the State certain monies. These actions were taken in violation of N.J.S.A. 54:40-70, in that the State failed to apply to the Superior Court of New Jersey for injunctive relief against the alleged violations as required by law. The defendants' actions above were another attempt by them to deprive plaintiff of due process of law.

46. The defendant, New Jersey Department of Transportation and the defendant employees of the defendant Department of Transportation have caused the removal of the signs in 1969, 1970 and 1971 located at (a) 6th and Boulevard, Ship Bottom, New Jersey; (b) on the property of Henry Paul on Route 72 and 7th Avenue, Manahawkin, New Jersey and (d) Route 72 200 feet west of Route 9 in Manahawkin, all without due process of law and did even unlawfully and without due process cause the destruction of plaintiff's sign at 6th and Boulevard, Ship Bottom, New Jersey, as well as other signs on Route 72.

47. Subsequent to the removal of the Route 72 and Mill Creek Road sign, the defendants State of New Jersey and defendant New Jersey Department of Transportation sought to be reimbursed for the cost of the illegal removal of the sign, causing plaintiff to go to the Ocean County Court in 1975 to obtain a finding that the sign did not violate State statutes. Plaintiff also has to go to Court to prove that the sign that was removed on defendant's order, from property at Route 72 and 7th Avenue in November of 1975, existed under an active

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Ocean County Court Order issued on April 19, 1974 and was licensed by the defendant State of New Jersey and by defendant New Jersey Department of Transportation, which license was illegally terminated by said defendants in violation of the provisions of New Jersey law and without proper notice to the plaintiff, further denying plaintiff due process. The defendant State of New Jersey and defendant Department of Transportation and defendant Gambaccini and defendant Sagner as a result of the actions of the Defendants, employees of the Department of Transportation has arbitrarily and capriciously refused and denied applications for advertising permits on Route 72 to the plaintiff. On June 4, 1975 defendant Dorothy Andres, by letter admitted that plaintiff was entitled by law to outdoor advertising permits, but such were never issued. Meanwhile defendant New Jersey Department of Transportation issued and continued to issue similar permits to other firms in direct competition with the plaintiff, including, but not limited to, Lincoln Property Company, which licenses have been renewed annually. Plaintiff has in excess of fifteen permit applications pending on which the State has refused to act for periods ranging from 1968 to the present, February 1980. The defendant State of New Jersey, since 1968 and to February, 1980 has delayed and procrastinated in the issuance of these permits, resulting in injury to the plaintiff including denial of and interference with the exercise of his Constitutional rights and Commissioner Sagner and Commissioner Gambaccini have both negligently failed and refused to prevent or to attempt to prevent said wrongful acts although they were aware of them and had the power and authority to stop or prevent said acts.

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48. The defendants above named, and each of them acting under color of State and Federal Law, acting maliciously and intentionally at various times, each and every year between 1968 and to date (February, 1980) and have committed the following acts, all constituting acts and practices, the continuing effect of which constitutes a pattern and practice of such a nature as to and they are intended to, deny to plaintiff the full exercise of rights secured by the Constitution of the United States, acts which unless restrained by the Court will continue:

(a) Tearing down and threatening to tear down plaintiff's properly licensed signs, in 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979 and 1980 under color of the New Jersey Outdoor Advertising Act in violation of plaintiff's rights under the Fifth and Fourteenth Amendments to the U.S. Constitution and otherwise;

(b) Condemning or attempting to condemn roadside property, during each of the years from 1968 to 1980, used by plaintiff and leaving similarly situated and similarly used property unaffected in violation of the plaintiff's rights under the Fifth and Fourteenth Amendments to the U. S, Constitution;

(c) Requesting and obtaining of a redefining of the State's riparian interest in land so as to extend the riparian easement to cover only lands purchased or leased by plaintiff and, therefore, take plaintiff's property or render it useless to plaintiff without just compensation in violation of plaintiff's rights guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution and

the appli- *** New Jersey State and local laws, ordinances and regulations; and without use of normal condemnation proceedings and thus denying due process and equal protection to plaintiff;

(d) Oppressive use of the State's power to levy upon judgments to impound plaintiff's assets so that he could not conduct business or defend condemnation or other actions against him and thus deny due process to plaintiff in violation of his rights under the Fifth and Fourteenth Amendments to the U.S. Constitution;

(e) Refusing to consider license applications in 1968 through and including 1979 and February 1980 and refusal to issue permits for spurious or no reasons; refusing to grant plaintiff due process of law which respect to denial of permits; denying plaintiff his rights to the hearings to which he is entitled, upon applications for outdoor advertising sign permits, and refusing to act either to deny or grant permits for the sole purpose of denying plaintiff a procedural basis for appeal and refusing in 1979 and 1980 to continue administrative hearings.

(f) Illegally cancelling permits without the requisite due process of law.

(g) Improperly tearing down and threatening to tear down signs put up by plaintiff when his right under State law to the permits in question was in bona fide legal dispute without resorting to the statutorily prescribed procedure thus depriving plaintiff of due process of law.

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(h) By defendants Pell and Stolowski, in May, June and July of 1969, engaging in false swearing before Courts of the State of New Jersey for the sole purpose of denying plaintiff the ability to defend himself in the proceedings being prosecuted by the defendant State and the other defendants against him.

(i) Engaging in a campaign of public defamation of plaintiff for the sole purpose of discrediting him for the purpose of preventing him from obtaining local zoning permits.

(j) Engaging in a pattern and program of criminal prosecutions for violations of outdoor advertising laws against the plaintiff alone and not others similarly situated for the purpose of discouraging plaintiff from the full enjoyment of his Constitutional rights and to prevent him pursuing relief in the Civil Courts.

(k) Engaging in taking under color of the Federal Highway Beautification Act and State statutes in an area which defendants are aware is not a scenic area, but a commercially-zoned strip and thus specifically not eligible for the use of Federal Beautification Act funds.

(l) Making critical legal evidence unavailable to plaintiff for the sole purpose of preventing him from seeking redress from the defendants or pursuing civil or criminal remedies to deprive him of due process of law in a Civil Trial.

Complaint No. 80-531, February 26, 1980.

49. Plaintiff has consistently during the period of 1968 to present sought his rights under the New Jersey Right-to-Know Act (N.J.S.A. 47:1A-1) to see defendant New Jersey Department of Transportation records relating to plaintiff's sign permits and to the alleged condemnations for so-called "Highway Beautification" as they affected him, but was wrongfully denied access to the same by defendant Degnan and his agents.

50. Individual defendants including defendants Byrne, Gambaccini, Degnan, Sagner, Mullen and Andres who were officers of the State of New Jersey, had or should have had at all relevant times, knowledge of the wrongs herein alleged as planned and done to plaintiff or with reasonable diligence would have learned of the wrongs and had the power under State Law, to prevent infliction thereof upon plaintiff by use of their respective positions and the authority attached thereto but negligently failed to prevent or attempt to prevent said wrongs.

51. During the many years of dispute, defendant New Jersey Department of Transportation obtained one money judgment (paragraph number 36) against plaintiff which plaintiff has paid in full but which defendant refuses to discharge of record thus injuring plaintiff and interfering with his full exercise of his right of privacy and other secured rights.

52. At present (Feb. 1980) defendants New Jersey Department of Transportation and State of New Jersey have advised that they will remove and destroy signs on February 29, 1980 at plaintiff's expense on the following

parcels on February 29, 1980 as designated on defendant's maps:

Parcel L 11B, L 4B, L 17D, L 17G,
L 22B, L 22C, E 31B and L 2R 31D.

Defendants have further advised that it intends to begin condemnation proceedings with regard to parcel L 4B, and that advertising copy must be forthwith removed from parcel L22, 23B and 23 all to the injury of and interference with defendant's rights.

53. During the period commencing in March of 1979 to present defendants Byrne, Degnan, Gambaccini, Andres and Mullen, persons having power by their offices to prevent or aid in preventing wrongs mentioned in 42 U.S.C. §1985, had knowledge that a proposed state bond issue contained provisions which would provide funding to enable defendant New Jersey Department of Transportation and Defendant employees and officers of the defendant New Jersey Department of Transportation to continue and even to seek further Federal Funding in their program and practice of wrongs against plaintiff and his exercise of protected rights. Said defendants Byrne, Degnan, Gambaccini, Andres and Mullen having power to prevent or aid in preventing the commission of said wrongful acts failed to by the exercise reasonable diligence, neglected and refused to prevent or attempt to prevent the continuance of the wrongful acts and in fact aided and assisted in the passage of said bond issue, containing the Route 72 "scenic beauty" land acquisition provisions and do continue to neglect and refuse to prevent said acts (as more fully described in the preceding paragraphs of this First Count) and continue to aid the other defendants by endorsing and supporting

the inclusion of provisions in an authorization bill which would permit approximately ½ million dollars for further takings of plaintiff's property only on Route 72 under the guise of "scenic beauty" and further denials of plaintiff's protected rights.

54. During the period from 1968 to present defendants have conspired for the purpose of depriving plaintiff of the equal protection of the laws, of equal privileges and immunities under the laws and his exercise of rights and privileges as a citizen of the United States as more fully described in preceding paragraphs of this FIRST COUNT, which paragraphs constitute the OVERT ACTS of such conspiracy.

55. During the period commencing on or about June of 1974 and to present, the defendants Byrne, Gambaccini, Degnan, Andres, Mullen, Cunningham, Sagner and other persons as yet unknown to plaintiff conspired for the purpose of depriving plaintiff of the equal protection of the laws, of equal privileges and immunities under the laws, and his exercise of rights and privileges as a citizen of the United States as more particulary described in the preceding paragraphs (in that time period) of this FIRST COUNT, which particular paragraphs constitute the OVERT ACTS of such conspiracy.

56. Among the signs defendant New Jersey Department of Transportation presently (February 4, 1980) threatens to wrongfully destroy are several utilized by plaintiff in the full exercise of First Amendment rights to support local and County candidates for political office.

57. All acts of defendants, individually, and/or acting in concert, were done knowingly and with actual malice and/or recklessy and/or negligently with the specific purpose of denying plaintiff his civil and Constitutional rights and/or interfering with plaintiff's full exercise of rights secured to him by the Constitution and with his having and exercising his full rights and/or privileges as a citizen of the United States.

58. Unless restrained by Order of the Court, the defendants and most particularly the defendant New Jersey Department of Transportation will continue to exercise state power, and act under color of law to engage in wrongful acts and practices, as complained of and described in the preceding paragraphs of this FIRST COUNT, which wrongful acts constitute a pattern and practice of violating plaintiff's protected constitutional and civil rights and/or denying him equal protection, due process, privacy, First Amendment rights and otherwise interfering with his full exercise of rights and privileges of United States citizenship.

WHEREFORE, plaintiff prays, as to the FIRST COUNT of the Complaint:

1. That the defendants preliminarily and permanently enjoined from

A. Taking any action whatever against plaintiff or plaintiff's property or property in which he has an interest and/or any roadway signs (highway advertising billboards) along State Highway 72 between Route 9 and Barnegat Bay in Manahawkin, Stafford Township, Ocean County, New Jersey.

Complaint No. 80-531, February 26, 1980.

B. Commending or continuing any action to condemn or otherwise take or interfer with plaintiff's enjoyment of his property rights and the free exercise thereof.

C. Preventing plaintiff from using the billboards in accordance with the local zoning and land-use ordinances.

E. Interfering with plaintiff's rights to maintain, repair and otherwise deal with said signs and their use.

F. Refusing to file a Warrent for Satisfaction of Judgment as to a certain Judgment described in paragraph 51 of the First Count.

G. Interfering with or harassing plaintiff in the full exercise of his lawful rights as a citizen of the United States.

H. Refusing or failing to continue to completion a certain administrative hearing in the New Jersey Department of Transportation dealing with plaintiff's Outdoor Advertising sign licenses and other matters.

I. Continuing to engage in discriminatory taking of lands and setting of arbitrary depths of land to be taken and otherwise acting in a discriminatory and unequal manner to ward plaintiff.

J. Refusing to set aside condemnation awards and to return title ownership to certain lands heretofore condemned and taken from plaintiff in violation of his rights of equal protection, due process and other protected rights.

K. Refusing to return to the United States Treasury all monies improperly obtained by the defendant New Jersey Department of Transportation for acquisition of lands on Route 72 between Route 9 and Barnegat Bay, Manahawkin, Stafford Township, which were zoned commercial by the Township of Stafford and were and are otherwise ineligible for such Federal Funding.

L. Seeking and/or utilizing any further Federal Funds and/or State Funds for "scenic beauty" or "Beautification" in said areas described in "K" above in that such area is already "highway commercial" and not "rural scenic".

M. Taking any action against plaintiff or his billboard advertising licensees or applications or billboards or lands without notice and hearing and the opportunity to inspect defendants' records.

2. That the Court grant such declaratory relief as shall be equitable and just and to effectuate the relief prayed for in No. 1 above.

3. That the Court award plaintiff a reasonable attorney's fee along with expenses with regard to the bringing and sustaining of this action.

4. Such other and further relief as may be equitable and just.

Complaint No. 80-531, February 26, 1980.

SECOND COUNT

JURISDICTION

59. This SECOND COUNT of the Complaint is brought by plaintiff against all of the captioned-defendants, seeking declarative and unjunctive relief, temporary and permenent and for damages.

The acts of the defendants as set forth herein constitute a violation of Title 42 of the U.S. Code, Sections 1983, 1985(3) and 1986 and of the due process and equal protection provisions of the Fifth and Fourteenth Amendments of the Constitution of the United States and plaintiff's rights of free speech, political activity and privacy under the First Amendment. Jurisdiction is conferred upon this Court pursuant to Title 28 of the United States Code, Sections 1331 and 1343. The amount in controversy, exclusive of interest and costs, exceeds ten thousand ($10,000.00) dollars.

60. Plaintiff repeats and realleges all of the acts complained of against the defendants in paragraphs 1 through and including paragraphs 58 as if they were set forth at length.

61. As a result of acts of the defendants, aforesaid, all in furtherance of the conspiracies against the plaintiff, the plaintiff has been prevented from engaging in his business of leasing advertising spaces on highway billboards, of erecting new signs and/or moving signs to other locations and to utilize certain sign boards for expression of First Amendment protected free speech in political and other matters and has otherwise been unlawfully impeded, and/or interfered with during the

period of 1968 to present and from March 1974 to present, in his lawful private, business and political activities.

62. Defendants further have injured plaintiff by taking possession or attempting to take possession of land parcels, during the periods complained of and by refusing to allow plaintiff to place income-producing advertising on certain signs, under threat to have plaintiff fined or imprisoned, and thus causing substantial harm to and loss of income to plaintiff, during each year from 1968 to present which losses continue and will continue.

63. Plaintiff refuses and has refused to accept any of the meager condemnation awards made in the several condemnation cases brought by defendants pursuant to the aforesaid conspiracies against plaintiff.

WHEREFORE, as to this SECOND COUNT plaintiff, in addition to the relief prayed for in the FIRST COUNT seeks compensatory and punitive damages in the amount of Fifteen Million ($15,000,000.00) dollars or such amount as may appear at trial to be due, together with legal costs and attorneys' fees and for such other relief as may be appropriate.

s/ _____

CLINTON E. CRONIN
Attorney for Plaintiff
Wesley K. Bell

Dated: Feb 26, 1980

Amended Complaint, No. 80-531, June 9, 1980

AMENDED COMPLAINT

CLINTON E. CRONIN
200 Main Street
Toms River, N. J. 08753
(201) 349-5775
Attorney for Plaintiff

In The
UNITED STATES DISTRICT COURT
For
THE DISTRICT OF NEW JERSEY

CIVIL ACTION NO.
80-531

WESLEY K. BELL, Individually and d/b/a
WES OUTDOOR ADVERTISING CO.,
Plaintiff,

vs.

STATE OF NEW JERSEY, JOHN J. DEGNAN, DOROTHY ANDRES, and NEW JERSEY DEPARTMENT OF TRANSPORTATION,
Defendants.

DEMAND FOR JURY TRIAL

Plaintiff, WESLEY K. BELL, individually and doing business as Wes Outdoor Advertising Co., brings this civil action, seeking preliminary and permanent

injunctive relief, declaratory judgment and monetary damages, etc., against the captioned defendants, and complains and alleges as follows:

PLAINTIFF

1. Plaintiff, WESLEY K. BELL, is an individual residing at 188 State Highway 72, Manahawkin, Stafford Township, Ocean County, New Jersey, engaged in the outdoor advertising business, and doing business as Wes Outdoor Advertising Co., in the State of New Jersey since 1957.

DEFENDANTS

2. Defendant, STATE OF NEW JERSEY, is a State of the United States, with its capital and its principal place of business located for purposes of service of process at the Office of the New Jersey Attorney General, John J. Degnan, State House Annex, Trenton, New Jersey.

3. Defendant, JOHN J. DEGNAN, is the Attorney General of the State of New Jersey and may be served at the State House Annex, Trenton, New Jersey.

4. Defendant, DOROTHY ANDRES, is the Executive Director, Outdoor Advertising Bureau, New Jersey Department of Transportation and/or Supervisor of outdoor advertising, permits and highway markings, an employee of that Department with an office at 1035 Parkway Avenue, Trenton, New Jersey.

5. Defendant, NEW JERSEY DEPARTMENT OF TRANSPORTATION, an agency of the State of New Jersey, has offices at 1035 Parkway Avenue, Trenton, New Jersey.

Amended Complaint No. 80-531, June 9, 1980.

FIRST COUNT

JURISDICTION

6. This Complaint is brought by Plaintiff, seeking declarative and injunctive relief, temporary and permanent, for violation, by all of the named-defendants, acting under color of law, of the Civil Rights Act of 1964, 42 U.S.C. Section 1983, and for conspiracy to violate the Due Process and Equal Protection provisions of the Fifth and Fourteenth Amendments of the United States Constitution and for violation of and interference with and for conspiracy to violate deprive, and interfere with plaintiff's right of full exercise of Constitutional rights, priveleges and immunities, secured to him by the Constitution and Laws of the United States. Jurisdiction is conferred on this Court pursuant to 28 U.S. Code, Sections 1331 and 1343.

7. Plaintiff, a citizen of New Jersey and of the United States has been, since 1957, and is, in the outdoor advertising business, in Ocean County, New Jersey. The plaintiff was and is, active in local politics, is presently the Democratic Mayor of Stafford Township, has run for the Democratic nomination for U.S. Senate once; for U.S. House of Representatives, once; for the New Jersey State Senate twice; and for the New Jersey State Assembly in 1979. He was also owner and Publisher/Editor of a weekly newspaper in 1963 and 1964, in Manahawkin, Stafford Township, New Jersey. He is or was the owner and/or lessee of numerous pieces of land abutting upon N.J. State Highway, Route 72, between Route 9 and the Barnegat Bay in Manahawkin, Stafford Township, N.J., lands subject to licensing by defendants State of New Jersey and defendant

Department of Transportation, upon which he has outdoor advertising billboards.

8. Defendant New Jersey Department of Transportation and all other defendants named in this Complaint, acting under color of law, to wit the Federal Highway Beautification Act and amendments thereto and various New Jersey Statutes have in the past and continue now to engage in acts and practices depriving plaintiff of rights privileges and/or immunities secured by the Constitution and laws of the United States and in acts and practices constituting a pattern and practice of discrimination and a denial of due process and equal protection due to plaintiff under the fourteenth Amendment and by Acts of comission and omission otherwise interfering with plaintiff's full exercise of rights secured by the Constitution and laws of the United States. Such acts to violate plaintiff's secured rights commencing in the past and continuing through February 1980 and to the present.

9. Defendant Dorothy Andres, despite the fact that she admitted in a letter of June 4, 1975 that Plaintiff Wesley Bell was entitled to outdoor advertising permits, did during the period of August 1979 through November 1979 unlawfully refused to process plaintiff's applications for such permits and did in fact hold such applications along with a certified check for fees of $210.00 until November 13, 1979, when she returned the unacted upon applications, wilfully denying procedural due process to plaintiff.

10. Defendant, Dorothy Andres on or about November 13, 1979 wilfully wrote "VOID" on plaintiff's certified check, after holding it and plaintiff's

applications for advertising permits for several months, without acting upon them, as required by law and with the intention and purpose of denying plaintiff his procedural due process rights, his right of administrative hearing and his right of appeal and hearing thereon.

11. During the period of August 1979 through February 5, 1980 and to the present, defendant Andres refused to accept applications from plaintiff for sign permits and did unlawfully order or cause to be ordered the removal and destruction of one of plaintiff's signs allegedly encroaching on a "paper street" right of way, claimed by the Defendant State and Defendant Department of Transportation when it was known to defendant Andres that said claim was false and that the State had no such claim.

12. Said unlawful conduct of defendant Dorothy Andres was done with the knowledge and acquiesence of defendant Department of Transportation and defendant John J. Degnan, New Jersey Attorney General through advice and consultation as represented to plaintiff in defendant Andres' letter of November 13, 1979.

13. On February 5, 1980 defendant John J. Degnan through his agent and with his knowledge and acquiescence caused the same permit applications and check to be returned again to plaintiff, the defendant John J. Degnan advising through his agent that plaintiff would not be given the procedural due process due him and even though the defendants, State of New Jersey, Department of Transportation, John J. Degnan and Dorothy Andres were well aware, as the letter of February 5, 1980 clearly shows, that certain parcels and the right to advertise on them was still the subject of negotiation between the plaintiff and the defendants.

Amended Complaint No. 80-531, June 9, 1980.

14. During the period between November 13, 1979 and February 5, 1980 and prior to and subsequent to those dates, defendants and each of them by letter, consultation and otherwise sought and planned and have so advised plaintiff that they will cause the removal and destruction of plaintiff's bill boards, at plaintiff's expense and will commence further proceedings, involving alleged sign encroachments, etc. Such actions and unlawful conduct occuring, while defendants have knowledge of a certain hearing, as to the ownership and use of the same parcels of land, commenced in January 1978, adjourned at the defendant John J. Degnan's request (through his agent) and with his knowledge and acquiesence and never resumed, thus denying to plaintiff procedural due process, including his right to a full hearing under the N.J. Administrative Procedures Act and the rights flowing therefrom affecting plaintiffs rights to the land, use of signs and removal of signs. Defendants State of New Jersey, Department of Transportation and Dorothy Andres all participated in this denial of procedural due process to plaintiff and have not, to date rescheduled the matter which they had adjourned before the Administrative Judge.

15. Plaintiff alleges that all of the defendants acted in concert from January 1978 to the filing of the Complaint and continue to do so to the present to deny permits to plaintiff, to refuse to even process his applications and to unlawfully seek the removal and destruction of his property while denying him due process and hearings on his applications as aforesaid.

16. Among the signs defendant New Jersey Department of Transportation presently threatens to

wilfully remove and destroy are several utilized by plaintiff in the full exercise of First Amendment rights to support local and county candidates for political office.

17. There are apparently funds, from a bond issue and others being sought from the Federal government whereby defendant State of New Jersey and Defendant Department of Transportation have publicly stated that they will engage in further actions on Highway 72 between Route 9 and Barnegat Bay in Manahawkin, Stafford Township, wherein Plaintiff's billboards stand.

18. By said letter of February 5, 1980 defendant Department of Transportation, with the knowledge and acquiescence of the other defendants, has threatened to remove and destroy a number of plaintiff's Route 72 signs and has for a number of years prevented plaintiff from leasing or otherwise utilizing many of his billboards, causing and continuing to cause him to suffer a deprivation of his rights under the First and Fourteenth Amendments to the United States Constitution.

19. Defendants have in the past and as alleged in paragraph 17 of this Amended Complaint will in the future, acting under color of law, including the Federal Highway Beautification Act, engage in acts depriving plaintiff of rights, privileges and immunities secured by the Constitution and laws of the United States.

20. All acts of defendants, individually, and/or acting in concert, were done knowingly and with actual malice and/or recklessly and/or negligently with the specific propose of denying plaintiff his civil and Constitutional

rights and interfering with plaintiff's full exercise of rights, privileges and immunities secured to him by the Constitution and laws of the United States and with his having and exercising his full rights and/or privileges as a citizen of the United States.

21. Unless restrained by Order of the Court all of the defendants and most particularly the defendant New Jersey Department of Transportation will continue to exercise State power, and act under color of law to engage in wrongful Acts and practices, as complained of and described in the preceding paragraphs of this FIRST COUNT, which wrongful acts constitute a pattern and practice of violating plaintiff's protected constitutional and civil rights and/or denying him equal protection, due process, privacy, First and Fourteenth Amendment rights and otherwise interfering with his full exercise of rights, privileges, and immunities of United States citizenship.

WHEREFORE, plaintiff prays, as to the FIRST COUNT OF THE AMENDED COMPLAINT:

1. That the defendants and each of them be preliminarily and permanently enjoined from:

A. Taking any action whatever against plaintiff or plaintiff's property or property in which he has an interest and/or any roadway signs (highway advertising, billboards) along State Highway 72, between Route 9 and Barnegat Bay in Manahawkin, Stafford Township, Ocean County, New Jersey.

B. Commencing or continuing any action to condemn or otherwise take or interfere with

plaintiff's enjoyment of his property rights to said lands and the signs thereon and the free exercise thereof.

C. Preventing plaintiff from using the billboards in accordance with the local zoning and land-use ordinances.

D. Interfering with plaintiff's rights to maintain, repair and otherwise deal with said signs and their use for commercial gain and First Amendment Expressions.

E. Interfering with or harassing plaintiff in the full exercise of his lawful rights, privileges and immunities as a citizen of the United States.

F. Refusing or failing to continue to completion a certain administrative hearing adjourned in 1978 in the New Jersey Department of Transportation dealing with plaintiff's Outdoor Advertising sign licenses sign removals and other matters.

G. Taking any action against plaintiff or his billboard advertising licenses or applications or billboards or lands without notice and hearing and the opportunity to inspect defendants records.

2. That the Court grant such declaratory relief as shall be equitable and just and to effectuate in the relief prayed for in No. 1 above.

3. That the Court award plaintiff a reasonable Attorneys fee along with expenses with regard to the bringing and sustaining of this action.

4. Such other and further relief as may be equitable and just.

Amended Complaint No. 80-531, June 9, 1980.

SECOND COUNT

JURISDICTION

22. By this SECOND COUNT of the Amended Complaint plaintiff seeks judgment against defendants Dorothy Andres and John J. Degnan for declarative and injunctive relief, temporary and permanent and for damages, compensatory and punitive.

23. The acts of the defendants as set forth herein constitute a violation of Title 42 of the U.S. code, Section 1983 and of the due process and equal protection provisions of the Fifth and Fourteenth Amendments of the Constitution of the United States and plaintiff's rights of free speech, political activity and privacy under the First Amendment. Jurisdiction is conferred upon this Court pursuant to Title 28 of the United States Code, Sections 1331 and 1343. The amount in controversy, exclusive of interest and costs, exceeds ten thousand ($10,000.000) dollars.

24. Plaintiff repeats and realleges all of the acts complained of against the defendants in paragraphs 1 through and including paragraphs 21 of the First Count as if they were here set forth at length individually.

25. As a result of the unlawful acts and conduct of the defendants Andres and Degnan aforesaid, individually and in concert with each other and with the defendants named in First Count, the plaintiff has been prevented from engaging in his business of leasing advertising spaces on highway billboards, of erecting new signs and/or moving signs to other locations and in utilizing certain sign boards for the expression of First Amendment protected free speech in political and other

matters and has otherwise been unlawfully impeded, and/or interfered with during the period from March 1974 to the present, in his lawful private, business and political activities.

26. Defendants further have injured plaintiff by taking possession or attempting to take possession of land parcels, during the periods complained of and by refusing to allow plaintiff to place income-producing advertising on certain signs, under threat to have plaintiff fined or imprisoned, and thus causing substantial harm to and loss of income to plaintiff during each year from 1975 to present, which losses continue and will continue.

WHEREFORE, as to this SECOND COUNT plaintiff, in addition to the relief prayed for in the FIRST COUNT seeks from the defendants Andres and Degnan, compensatory and punitive damages in the amount of Fifteen Million ($15,000,000.00) dollars or such amount as may appear at trial to be due, together with legal costs and attorneys fees and for such other relief as may be appropriate.

Dated: June 9, 1980

CLINTON E. CRONIN
Clinton E. Cronin
Attorney for Plaintiff
Wesley K. Bell

Order, Lack of Jurisdiction No. 80-2109
July 29, 1981

ORDER

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 80-2109

WESLEY K. BELL,

Appellant,

vs.

STATE OF NEW JERSEY, JOHN J. DEGNAN, DOROTHY ANDRES, and NEW JERSEY DEPARTMENT OF TRANSPORTATION.

(C.A. No. 80-00531)

Submitted Under Third Circuit Rule 12(6)

July 21, 1981

Before: ADAMS, HUNTER and SLOVITER,
Circuit Judges

The appeal is dismissed for lack of jurisdiction. *See United States v. McKnight*, 593 F.2d 230 (3d Cir. 1979).

(Illegible) M. ADAMS
Circuit Judge

Dated: July 29, 1981

Order No. 80-531, Judge Thompson
December 21, 1982

ORDER

UNITED STATES DISTRICT COURT
District of New Jersey

WESLEY K. BELL, Individually and d/b/a
WES OUTDOOR ADVERTISING CO.,
Plaintiff,

vs.

STATE OF NEW JERSEY, JOHN J. DEGNAN,
DOROTHY ANDRES, and NEW JERSEY
DEPARTMENT OF TRANSPORTATION,
Defendants.

Civil No. 80-531.

Original Filed
Dec 21 1982
Allyn Z. Lite, Clerk

This matter having been brought before the court upon motion by defendants to dismiss the complaint for failure to state a claim upon which relief may be granted, and the court having treated the motion as one for summary judgment, and having considered the entire record, it is this 17th day of December 1982,

ORDERED that the complaint against John Degnan be dismissed in its entirety; and it is further

Order No. 80-531, Judge Thompson December 21, 1982.

ORDERED that paragraph 17 of the complaint be and hereby is dismissed; and it is further

ORDERED that within 20 days from the date of this order the parties supply the court with the information requested by the court in the opinion filed even date herewith; and it is further

ORDERED that the decision on the motion for summary judgment concerning all other remaining claims be and hereby is reserved.

ANNE E. THOMPSON
U.S.D.J.

Opinion No. 80-531, Judge Thompson
December 21, 1982

OPINION

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

WESLEY K. BELL, Individually and d/b/a
WES OUTDOOR ADVERTISING CO.,
Plaintiff,

vs.

STATE OF NEW JERSEY, JOHN J. DEGNAN,
DOROTHY ANDRES, and NEW JERSEY
DEPARTMENT OF TRANSPORTATION,
Defendants.

Civil No. 80-531.

Original Filed
Dec 21 1982
Allyn Z. Lite, Clerk

THOMPSON, District Judge

Appearances:

Richard M. Hluchan, Esquire; Sterns, Herbert & Weinroth; 186 West State Street; P. O. Box 1298; Trenton, New Jersey 08607; *(Attorney for Plaintiff)*.

Opinion No. 80-531, Judge Thompson December 21, 1982.

Nickolas F. Monteforte; Deputy Attorney General; Department of Law and Public Safety; Division of Law; Richard J. Hughes Justice Complex; CN 114; Trenton, N.J. 08625; (*Attorneys for Defendants*).

By order dated July 13, 1982, the court afforded plaintiff an opportunity to supplement the record to show why judgment should not be granted in favor of the remaining defendants in this matter. For the following reasons, the court concludes that it must have more information from the parties before it can make a final determination.

In his affidavit, plaintiff appears to imply that the billboards for which he seeks permits or concerning which the state has advised him it will remove are located on properties not condemned by the state. The court must reject this implication, however. Paragraph 52 of the original complaint filed in this action and paragraph 4 of the verified petition for temporary restraints clearly indicate that the challenged state action concerns map parcel numbers which were the subject of at least one previous action in this court, *Bell v. State of New Jersey*, Civ. No. 77-1531, as well as at least one previous action in the state court, *Bell v. Kohl*, No. C-2643-73, Superior Court of New Jersey, Chancery Division, Ocean County. For example, Exhibit 3 appended to the original complaint in 77-1531 challenging state actions involved in the condemnation of 38 properties lists the parcels cited in paragraph 52 of the original complaint in this case and in paragraph 4 of the verified petition for temporary restraints. Since Civil Action No. 77-1531 was dismissed with prejudice, and since other courts have dismissed challenges to the

state's condemnation actions concerning these parcels, the issue of ownership of these parcels is *res judicata*. In addition, plaintiff's former counsel had represented in open court that the same issues pending before the administrative hearing officer in the adjourned hearing were precisely those before the state and federal courts in the actions mentioned above.

Since the plaintiff is bound by his pleadings that the billboards in question are located on these properties, and since N.J.S.A. 27:7A-13 stipulates that no roadside signs may be erected or maintained within the right-of-way of an interstate highway within the state, it appears that defendants could not have granted the permits as a matter of law. *See also* N.J.A.C. 16:41-8.3 (explicitly prohibiting the erection or maintenance of outdoor advertising signs on the highways). While, as indicated earlier, it may be established that the signs in question are on state land, the court cannot be certain on the record before it that the signs fall within the prohibition of section 7A-13. While it may be a very simple matter, the parties should, nevertheless, submit documentation indicating not the location of the signs, for that has already been established by the prior record, but whether the signs fall within the right-of-way prohibition. If in fact the signs are on the right-of-way, and defendants could not have granted the permits or have allowed the billboards to remain standing, it is clear that defendants had then afforded plaintiff all the process he was due concerning both the removal of and application for billboards on these properties. Since the administrative body was bound by the prior judgments of the state and federal courts concerning ownership of these parcels, the administrative agency could not have made any other

decision. Under these circumstances, a full-fledged hearing was not necessary, since plaintiff had already been afforded an opportunity in both federal and state court to show ownership of these properties. It is clear that the defendants considered the signs as falling within the right-of-way prohibition. If plaintiff indicates that there was a dispute raised at that time about whether or not the signs are within the right-of-way and therefore expressly prohibited by statute, this court will decide only whether or not plaintiff was afforded the process necessary to satisfy constitutional standards; the court will not sit as an appellate court for state agency determinations. If such a dispute existed, the parties should, by brief, address the merits of the due process argument.

If, on the other hand, the agency had some discretion in the matter, as, for example, if the exception of section 7A-16 applied, then the parties should address whether or not plaintiff was afforded the process due him. If plaintiff may have been entitled to a permit in the discretion of the state agency, then he certainly would have to have been accorded a hearing of some kind prior to the destruction of his billboards. *See Logan v. Zimmerman Brush Co.*, _____ U.S. _____, 50 U.S.L.W. 4247, 4251 (Feb. 24, 1982). As will be discussed shortly, it may make a difference if plaintiff is alleging that the defendant violated an established state procedure or merely that the state procedure itself caused the asserted deprivation. *Compare Parratt v. Taylor*, 451 U.S. 527 (1981) *with Logan, supra.* The court's discussion, *infra*, of the one-day hearing in January 1978 regarding #E31B/L2R-31D applies to these parcels as well. Thus, although summary judgment concerning these parcels

may be appropriate once the court receives the additional information, the court cannot grant defendants' motion at this time.

The result may be different with regard to #E31B/:2R-31D, however. This piece of property is not among those condemned by the state. Although the state claims that it has acquired the property, plaintiff has submitted evidence indicating that he may have retained some interest in this parcel. According to the undisputed affidavit of counsel for the defendants, a hearing was provided to plaintiff by defendants regarding all of the parcels in question. The hearing was scheduled for January 31, 1978. Plaintiff's attorney at that time advised counsel for the State that he intended to file a motion to restrain the hearing and did in fact file such a motion before Judge Barlow.

A transcript of the January 31, 1978 hearing reveals that plaintiff took the position that the Commissioner of Transportation could not proceed with the hearing because the subject of the hearing was before both the United States District Court in Civ. No. 77-1531 and the Appellate Division of the Superior Court of New Jersey in No. A-3891-76. The hearing was adjourned without date at the request of plaintiff's counsel. It was understood that plaintiff's counsel would initiate any desired continuation of the hearing, but no such efforts have ever been undertaken. Concerning L2R-31D, the state asked plaintiff to submit documentation concerning ownership of this parcel.

In determining whether or not plaintiff's due process rights have been violated, the court notes as a preliminary matter that plaintiff does not appear to be

challenging the adequacy of the administrative procedures available to him. Rather, the complaint appears to allege that certain defendants have acted wilfully to deprive plaintiff of the safeguards available to him. The state appears to be contending that the hearing provided to plaintiff in 1978 pursuant to N.J.S.A. 16:41-8.12 does not actually apply to this situation because that section concerns revocation of permits or licenses and not application for a permit or destruction of billboards for which no permit was ever issued. Even if the state were correct that this particular section was not applicable, due process requires that a person affected by an administrative action be given a full opportunity to be heard before any official action is taken. The hearing must be "at a meaningful time and in a meaningful manner." *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970). In *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the Court emphasized three factors in determining whether the requirements of due process have been satisfied. These factors are (1) the private interests implicated; (2) the risk of an erroneous determination as a result of the process accorded and the probable value of additional procedural safeguards; and (3) the public interest and administrative burdens, including the costs of additional procedures. The Supreme Court has recently reiterated its concern that predeprivation procedures be afforded. *See Logan, supra.*

Based upon the record presently before the court, it is unclear precisely what process has been afforded plaintiff. It is noteworthy that in *Avant Industries Ltd. v. Kelly*, 127 N.J. Super. 550, 553 (App. Div. 1974), the court noted that the "total absence of any hearing makes appellate review impossible, for there is no record for us

to consider." The absence of such a procedure, the court stated, violated due process. *Id.* It also appears that the New Jersey administrative procedures indicate that a hearing may be required. The parties, particularly the defendants, should also supply the court with appropriate information and documentation concerning precisely what remedies are available to a party seeking to erect or maintain billboards as a matter of state procedure. In addition, the parties should address whether or not the requirements of the New Jersey administrative procedure act applies to this situation.[1]

The court need not determine at this time, however, precisely what procedures must be afforded plaintiff under these circumstances. The state has in fact offered in January 1978 a hearing concerning this matter. The state has accorded plaintiff an opportunity to submit documentation concerning his right to maintain or erect billboards on the parcel in question. There is no indication in the record that plaintiff has actually asked the state to proceed with the hearing. There is also no indication that the hearing has been closed. There is also nothing in the record to indicate that the state would

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[1] Prior to 1978 many cases contested before state agencies were heard initially by a hearing officer or examiner who was an employee of the agency responsible for rendering a decision. As the Supreme Court of New Jersey stated in *N.J. Civil Serv. Ass'n v. State*, 88 N.J. 605 (1982), "[t]he use of agency employees to adjudicate claims against an agency encouraged an institutional bias that undermined the fairness and impartiality desired in administrative adjudication." *Id.* at 608-09 (citation omitted). To rectify this situation, the state legislature amended the Administrative Procedure Act ["APA"], N.J.S.A. 52:14B-1 *et seq.* in 1978 to create an independent administrative law office. *Id.* at 609. If the APA applies and the state decides to grant or to continue a hearing, it may wish to consider changes in the law in the intervening period.

consider the matter closed if plaintiff did not seek to have another date set for the hearing within a certain period of time. If the state does not consider the matter closed, the court cannot consider plaintiff's due process claims at this time because he has not exhausted his administrative remedies.[2] If the state does consider the hearing closed, there are serious questions raised under these circumstances of a due process violation if plaintiff had no notice that the proceedings would be terminated and that the state would consider plaintiff effectively estopped from contesting the state's action if plaintiff did not initiate reconvening the hearing by a certain

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[2] As the Supreme Court stated in *Gibson v. Berryhill*, 411 U.S. 564, 574 (1973):

> Normally when a State has instituted administrative proceedings against an individual who then seeks an injunction in federal court, the exhaustion doctrine woud require the court to delay action until the administrative phase of the state proceedings is terminated, at least where coverage or liability is contested and administrative expertise, discretion, or factfinding is involved. [footnote omitted]

See also, Republic Industries, Inc. v. Central Pennsylvania Teamsters Pension Fund, No. 82-1251, slip op. at 1 (3d Cir. Nov. 19, 1982) (citation omitted). Unlike the situation in *Berryhill*, the plaintiff in this case has not raised in his various complaints the adequacy of the administrative remedy. Although plaintiff raises for the first time in his affidavit the issue of possible bias, this mere conclusory statement without any support is insufficient to dispense with the administrative exhaustion requirement. Furthermore, it is in direct opposition to that portion of the relief sought in the amended complaint—the continuance of the hearing. The exhaustion requirement, of course, presupposes an adequate state remedy. *Republic, supra*, slip op. at 10 (citation omitted). This exhaustion requirement is for the administrative action forming the basis of plaintiff's asserted constitutional deprivation. It is not a requirement that plaintiff exhaust administrative or state remedies prior to bringing a civil rights action in federal court based upon a constitutional deprivation.

date. Without a statement by the plaintiff that he has sought reconvening of the hearing and an affidavit by the state that it would not permit any further procedures to take place, the court cannot properly consider the due process claims.[3] Accordingly, the court will require the

[3] The court also finds abstention on the basis of *Younger v. Harris*, 401 U.S. 37 (1971), inappropriate. In *Williams v. Red Bank Bd. of Education*, 662 F.2d 1008 (3d Cir. 1981), the court extended the *Younger* doctrine to pending state administrative proceedings. *Id.* at 1016. The court noted that "[a]dministrative regulation often forms a crucial aspect of a state's implementation of its laws, and to bar *Younger* abstention simply on the ground that the pending proceedings are 'administrative' could easily undermine important state policies and concerns." *Id.* The three criteria for abstention in such proceedings are whether:

> (i) the state proceedings reflect strong and compelling state interests; (ii) the state proceedings are adequate to vindicate federal claims, and (iii) federal intervention into state administrative proceedings would be substantial and disruptive.

Deck House v. New Jersey St. Bd. of Architects, 531 F. Supp. 633, 645 (D.N.J. 1982), *citing Red Bank, supra.* In a challenge to state bar disciplinary proceedings, the Supreme Court has set forth related criteria for abstention: (1) whether the proceedings constitute ongoing state judicial proceedings; (2) whether the proceedings implicate important state interests; and (3) whether there is an adequate opportunity in the state proceedings to raise constitutional challenges. *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, _____ U.S._____, 50 U.S.L.W. 4712, 4714 (June 21, 1982).

In the instant case, the proceeding which plaintiff seeks to enjoin is merely the actual enforcement of the administrative decision to remove the billboards in question. These state administrative actions are not the type of judicial or quasi-judicial proceedings the abstention doctrine was intended to reach. Moreover, in light of plaintiff's First Amendment claim, the irreparable harm exception to *Younger* comes into play. In addition, the court cannot conclude that the state's interest in highway beautification reflects the important state interest necessary for abstention. Finally, the court cannot on this record conclude that the state proceedings are adequate to vindicate plaintiff's constitutional rights because the nature and scope of the state proceedings are unclear. To the extent that plaintiff does not seek to stop administrative action, but instead seeks to compel administrative action, *Younger* does not apply.

parties to submit the appropriate information with 20 days from the date of this opinion.

As far as other allegations contained in the complaint are concerned, that portion of paragraph 6 regarding a conspiracy is dismissed on *res judicata* grounds. All aspects of the complaint against John Degnan will be dismissed because there is no indication that he acted personally in this matter. *Respondeat superior* is not a basis for section 1983 liability. There are no violations of plaintiff's constitutional rights set forth in paragraph 17 and that portion of the complaint will also be dismissed. The court will enter an order consistent with this opinion.

December 17, 1982.

Order No. 80-531, Judge Thompson
September 28, 1983

ORDER

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CIVIL No. 80-531

WESLEY K. BELL, Individually and d/b/a
WES OUTDOOR ADVERTISING CO.,
Plaintiff,

vs.

STATE OF NEW JERSEY, JOHN J. DEGNAN, DOROTHY ANDRES, and NEW JERSEY DEPARTMENT OF TRANSPORTATION,
Defendants.

Original Filed
Sep 28 1983
Allyn Z. Lite. Clerk

This matter having been brought before the court upon motion by plaintiff for partial summary judgment and upon motion by defendants for summary judgment, and the court, having considered the briefs submitted, the arguments of counsel and the entire record and for good cause having been shown; it is this 23rd day of September 1983,

Order No. 80-531, Judge Thompson September 28, 1983.

ORDERED that for the reasons stated in the court's opinion filed even date herewith, plaintiff's motion be and hereby is denied; and it is further,

ORDERED that summary judgment is granted on behalf of defendants and the amended complaint be and hereby is dismissed with costs.

ANNE E. THOMPSON
Anne E. Thompson, *U.S.D.J.*

Opinion No. 80-531, Judge Thompson
September 28, 1983

OPINION

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CIVIL No. 80-531

WESLEY K. BELL, Individually and d/b/a
WES OUTDOOR ADVERTISING CO.,
Plaintiff,

vs.

STATE OF NEW JERSEY, JOHN J. DEGNAN, DOROTHY ANDRES, and NEW JERSEY DEPARTMENT OF TRANSPORTATION,
Defendants.

Original Filed
Sep 28 1983
Allyn Z. Lite. Clerk

THOMPSON, District Judge

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Opinion No. 80-531, Judge Thompson September 28, 1983.

This opinion resolves defendants' motion for summary judgment and plaintiff's motion for partial summary judgment. The facts underlying this matter have been set forth at length in previous opinions of this and other courts and will be repeated only as necessary.

The discussion which follows in this section of the opinion concerns all parcels except #E31B/L2R-31D ["L2R]. In its December 17, 1982 opinion, the court made clear that plaintiff's claim of ownership of the parcels is barred by the doctrine of *res judicata*. The state has condemned the properties in question and plaintiff's challenges to the state's taking of these properties have already been rejected by the courts. As noted in the December 17, 1982 opinion, the pleadings in this matter eliminate any question concerning whether the notices of encroachment and the applications for permits involve these parcels.

The issue presented is whether the state's rejection of plaintiff's applications for permits for billboards on these parcels and its notices to plaintiff to remove billboards standing in these areas violated plaintiff's Fifth and Fourteenth Amendment rights to due process of law. The essential facts are not in dispute. In its December 17, 1982 opinion, the court asked for supplemental briefing concerning whether the Department of Transportation had the discretion to permit plaintiff to erect or maintain billboards on these parcesl. Having concluded that the defendants could not have granted the permits as a matter of law, the court holds that the actions of defendants concerning these parcels have not denied plaintiff his right to due process of law. Accordingly, summary judgment is granted concerning these parcels.

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Although plaintiff contends that his right to erect or maintain billboards in the areas in question presents an issue of fact, N.J.S.A. 27:7A-13 stipulates that no roadside signs may be erected or maintained within the right-of-way of an interstate highway within the state. *See also* N.J.A.C. 16:41-8.3 (explicitly prohibiting the erection or maintenance of outdoor advertising signs on the highways). N.J.S.A. 27:7A-22 authorizes the Commissioner of Transportation to prosecute any violations of J.J.S.A. 27:7A-13.

N.J.S.A. 27:7-22.4 permits the Commissioner of the Department of Transportation to acquire by gift, purchase or condemnation real property adjacent to Federal-aid highways for landscape purposes. *See Wes Outdoor Advertising Co. v. Goldberg*, 55 N.J. 347 (1970). Under the authority of this statute, the state acquired the parcels in question. Actions of the state in acquiring these parcels have been upheld in prior court decisions. *See opinion of December 17, 1982*, at 2-3. N.J.S.A. 27:7-22.4 provides that any property acquired under that section "shall be considered to be integral parts of the Interstate Highway System and the State highway system and the cost of said acquisition shall be considered as a part of the cost of the right-of-way of such highways." The term "right-of-way" has been interpreted by the Department of Transportation to mean the total width of property owned by the state. *Southern New Jersey Newspapers, Inc. v. St. of New Jersey Dep't of Transportation*, 542 F. Supp. 173, 176 (D.N.J. 1982)(citation omitted).

Since prior proceedings and pleadings establish that the billboards in question are located on these parcels and that the state's condemnation of these proceedings

is valid, there can be no question but that the billboards and the applications to erect billboards fall within the right-of-way. Therefore, under N.J.S.A. 27:7A-13, defendants could not have permitted plaintiff to maintain or erect billboards on these parcels.

The process due plaintiff under these circumstances has been satisfied by defendants. Due process is a flexible concept and calls for such procedural protections as the particular situation demands. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). The court must consider the private interests at stake in a governmental decision, the governmental interests involved, and the value of various procedural requirements in determining the extent of the process due plaintiff. *Hewitt v. Helms*, 51 U.S.L.W. 4124, 4127 (Feb. 22, 1983), *citing Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

The state administrative body was bound by the prior judgments of the state and federal courts concerning ownership of these parcels, and could not have made any decision other than that no permits could issue for billboards located on these parcels. Under these circumstances, a full-fledged hearing would not have materially assisted the Department of Transportation's decision, as there would have been nothing left for the hearing to decide. *See Penner v. Schweiker*, 701 F.2d 256, 260 (3d Cir. 1983) (in social security context, "new" claims could be denied by the Secretary of Health and Human Services without a hearing because they were barred by *res judicata*). Plaintiff had already been afforded an opportunity in both state and federal court to demonstrate ownership of or an interest in these parcels. Plaintiff has not shown that at the pertinent

time he raised any question concerning whether the signs fell within the right-of-way prohibition. In any case, the pleadings in this matter establish that they do fall within that prohibition. Thus, there was no denial of due process and summary judgment is granted concerning these parcels.

The remaining parcel, L2R, presents a more difficult issue, in part because of the failure on the part of the state to supply the court with information concerning the state procedures available to an aggrieved party at the time in question. The state's posture in this regard appears to result from its steadfast adherence to the view that if it was not by statute or regulation required to afford a party who is subject to adverse administative action a hearing, the requirements of due process cannot compel it to offer an aggireved party some form of hearing.[1]

The analysis starts with the fundamental precept that "procedural due process is necessitated only if there has been a taking or deprivation of a protected interest." *Chrysler Corp. v. Fedders Corp.*, 670 F.2d 1316, 1321 (3d Cir. 1982), *citing Bd. of Regents v. Roth*, 408 U.S. 564, 569 (1972). The "taking" need not be total. Any significant taking of property falls within the purview of the Due Process Clause. *Fuentes v. Shevin*, 407 U.S. 67, 86 (1975). The threatened destruction of billboards as well as plaintiff's apparent entitlement to erect billboards on the property if he is the owner or has the permission of the owner to do so, meets the requirements of a taking within the meaning of the Due Process Clause. The Fourteenth Amendment's protection of property safeguards not only rights of undisputed ownership but extends also to "any significant property interest."

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Boddie v. Connecticut, 401 U.S. 371, 379 (1971). *See also Carey v. Piphus*, 435 U.S. 247, 266 (1978).

From affidavits recently filed with the court by plaintiff, it is apparent that plaintiff has a claim to an interest in the parcel. In *McCulloch v. Glascow*, 620 F.2d 47 (5th Cir. 1980), the defendant town claimed to have acquired by prescription an easement for a public street along a strip of land of disputed ownership. Plaintiffs were without a record title to the strip, but claimed title in fee simple through adverse possession unencumbered by the town's alleged prescriptive easement. *Id.* at 49. Despite having knowledge of plaintiff's claim of title and without taking action to determine or settle the competing claims between it and plaintiffs, the town knocked down plaintiffs' fences, bulldozed the strip and built a street on it. *Id.*

The Fifth Circuit held that plaintiffs possessed a sufficient property interest in the land to entitle them to a due process hearing. *Id.* at 50. Regardless of the ultimate success of plaintiffs' claim of title to the property, the conflict engendered by the competing claims was sufficient to require a due process hearing. *Id.*

The *McCulloch* case is instructive. If in the instant case the state was aware of plaintiff's property interest in the parcel, it could not have moved to destroy the billboards without affording plaintiff procedural due process. Similarly, if plaintiff had indicated to the state that he had an interest in the parcel, and, consequently, was entitled to a permit for a billboard, the state could not deny the application for permits without affording plaintiff an appropriate hearing. As will be discussed,

infra, defendants are incorrect in maintaining that merely because there was no provision in the pertinent statute or regulations requiring them to conduct a hearing concerning an application for a permit to erect or maintain billboards, they were not required to hold such a hearing. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982); *Holman v. Hilton*, No. 82-5563 (3d Cir. July 6, 1983). The court must determine whether, under the circumstances, the procedures actually afforded plaintiff comported with the requirements of due process.

The state has not supplied the court with an affidavit or other documentation describing the procedures available in 1979 to a party who seeks a permit to erect a billboard. Although it is obvious from the documents submitted in this matter that an aborted hearing of some kind took place in January 1978, the contours of that hearing have not been delineated. Thus, for example, the court does not know precisely what the "hearing" afforded plaintiff in 1978 was supposed to decide. Certainly, the agency was without power to determine title.[2] Moreover, the court does not know whether plaintiff was afforded an opportunity to cross-examine witnesses or present evidence in his behalf. The court also does not know whether a record would be made of any hearing or whether there were any avenues of administrative appeal or judicial review available.

The affidavits submitted to the court do, however, establish certain undisputed facts for purposes of these motions. Neither side disputes plaintiff's need to secure a permit either to erect or to maintain billboards on the parcel since it falls within 660 feet of the right-of-way.[3] As noted in the court's oral opinion of July 12, 1982, the undisputed affidavit of Nickolas F. Monteforte, Deputy

Attorney General, states that on November 8, 1977, the Department of Transportation served upon plaintiff eight notices of eight separate sign encroachments on what allegedly were state rights-of-way. The alleged sign encroachments were located on a number of parcels, including L2R. Plaintiff requested and was granted a "hearing" concerning the notices of encroachments. At the same time, plaintiff instituted suits in both the state and federal courts challenging the state's condemnation of his properties. Plaintiff's attorney moved in federal court to restrain the hearing before the Department of Transportation set for January 31, 1978.

Obviously unaware that not every parcel involved in the application for permits had been condemned by the state, plaintiff's attorney at that time stated at the hearing that the hearing should not proceed because the subject matter of that hearing was the same as that presented to the federal and state courts. The hearing, nevertheless, started on January 31, 1978. According to the undisputed Monteforte affidavit, the hearing was adjourned when plaintiff's counsel had to catch a train. Monteforte and plaintiff's counsel "understood" that plaintiff's counsel would contact plaintiff concerning continuation of the hearing. Counsel subsequently made no efforts to continue the hearing.

The transcript of the aborted hearing indicates that the Department of Transportation had witnesses testify concerning the state's alleged interest in the property. It is apparent that the state was aware of the possibility that plaintiff had an easement to use billboards on this parcel. With the exception of this parcel, the issues presented in the January 31, 1978 hearing[4] were also those presented to and decided by the state and federal courts.[5]

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According to the Monteforte certification of July 7, 1982, Department of Transportation records at the time of the 1978 hearing indicated that the state received a deed dated December 5, 1974 from Egan Kahl and others to the state. That was recorded on January 8, 1975. Records also indicated a recording of a contract for sale of the same parcel from the prior owner, Gustav Foster, to Wesley K. Bell. The contract was dated December 26, 1968 and was recorded on December 30, 1968. Foster conveyed to Kahl and others by deed dated November 24, 1971, which transaction was recorded on February 8, 1972. It was the Department of Transportation's understanding in 1978 that Bell had breached the 1968 contract rendering that contract invalid. Monteforte explains that, although the state claimed title to the parcel, it decided to allow Bell to produce any documentation showing that he was entitled to a permit to erect or maintain billboards on the parcel. At least by the time the 1978 hearing was adjourned, plaintiff had not produced any evidence indicating that he had an interest in this parcel.

The dismissal by the United States District Court of the complaint in 77-1531 and the affirmance of that dismissal by the United States Court of Appeals for the Third Circuit covered the actions complained of as of the date of the amended complaint, March 2, 1978. The dismissal of the complaint by the district court did not take place until March 11, 1980.

In applications postmarked October 15, 1979 plaintiff applied for permits on this parcel, as well as on the other parcels involved in this action. Defendant Andres received the applications. In her affidavit filed July 7,

1982, Andres states that she noted that the applications concerned parcels which had been the subject of court proceedings, the result of which had established ownership by the state of all parcels involved with the exception of L2R. Andres noted that she was aware of the state's deed to this parcel as well. Because it was her understanding that plaintiff "was claiming some form of title" to this parcel, Andres requested legal advice from the office of the Attorney General. Pursuant to that advice Andres wrote a letter to Bell on November 13, 1979 advising Bell that the applications were improper. With respect to parcel L2R, however, Andres requested that Bell produce some documentation of his claim that the Department of Transportation did not own this parcel so that a further review of the permit application could be considered. Andres further informed Bell that failure to produce any documentation would be taken as an admission of Department of Tranportation ownership of L2R. In her undisputed affidavit, Andres states that, as of the date of the affidavit, Bell had never produced any documentation of his claim to title of L2R. The check submitted with the application was returned to Bell with the marking "VOID" across the check, in accordance with departmental procedures.

On December 13, 1979, plaintiff's attorney returned the applications and the check marked "VOID." Andres made several attempts to meet with plaintiff's attorney during December 1979 and the parties finally met on January 2, 1980 to discuss the applications. Monteforte's letter to plaintiff's counsel dated February 5, 1980 noted the agreement reached during the January 2, 1980 meeting. Minutes of the meeting taken by Andres and submitted by defendants as Exhibit J corroborate

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Monteforte's certification of the agreement among the parties. Monteforte's letter indicated that the applications were once again being returned to plaintiff because they were improper. Monteforte's letter referred to the November 13, 1979 Andres letter to plaintiff warning him that if he did not remove his signs from the parcels in question the state would remove them. One of the signs allegedly encroaching on state property was located on parcel L2R. The reason given for the notices of encroachment and the return of the applications was that the matter of ownership of the parcels had already been fully litigated. Referring to the agreement reached by the parties on January 2, 1980, Monteforte noted that all parties agreed that parcels L11B, L17G, L22C and L22B were owned by the Department of Transportation and that all signs would be removed by January 31, 1980. Bell was permitted until February 29, 1980 to produce documentation that the condemnation proceedings on parcel L4B did not implead the proper parties. Until that time, the parties agreed that all advertising copy would be removed by January 31, 1980. The state expressly stipulated in the agreement that the accord concerning L4B did not in any way prejudice the state's right to claim ownership of the parcel or that the issue of ownership had already been adjudicated.

Concerning parcels L22, 23B and 23, which had not been included in Bell's permit applications, Bell was to present proof by February 29, 1980 that his right to advertise on these parcels was not extinguished by the Department of Transportation and that he was not encroaching on state property. Any advertising was to be removed by January 31, 1980.

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Similarly, the parties agreed that any advertising copy would be removed from L2R by January 31, 1980. Bell was to present proof of his interests in this parcel by February 29, 1980. Monteforte warned that, "[s]hould any of the required documentation not be produced to the satisfaction of the Department of Transportation by the aforesaid dates, the subject signs will be removed without further notice." There is nothing in the record to indicate what level of documentation would satisfy the Department of Transportation or the manner in which any documentation would be evaluated.

No documentation was submitted to the Department of Transportation. Instead, plaintiff filed this suit on February 26, 1980. Although most of the allegations contained in the original complaint had been the subject of prior court actions, plaintiff once again raised a broad conspiracy theory concerning events occurring as far back as 1968. The amended complaint of June 10, 1980 makes similar allegations. The amended complaint charged a variety of defendants with violating plaintiff's right to due process by refusing to process his applications for permits and threatening to remove the billboards in place. Paragraph 13 of the amended complaint asserts that defendants improperly returned the applications even though certain parcels and the right to advertise thereon were the subject of negotiations between the parties. Plaintiff also asserted that defendants' threat to remove the signs was improper because defendants knew that the issues involved were the same as those presented in the January 1978 hearing. Among other requests for relief, plaintiff sought an order directing defendants to continue the January 1978 hearing.

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In his affidavit filed with the court on July 30, 1982, plaintiff again rases the issue of the January 1978 hearing. Plaintiff states that he has not yet had an opportunity to present his proofs, "and obviously there has been no final administrative determination" by the Department of Transportation.[6] Since he now believes that the Department of Transportation would be prejudiced against him, plaintiff no longer seeks continuation of the hearing. Rather, plaintiff wants this court to determine the merits of his permit applications. In this affidavit and in a subsequent affidavit filed with the court, plaintiff presents some evidence of his interest in L2R. At no time has plaintiff indicated that he has asked the Department of Transportation to continue with the hearing or that he did not agree to the procedures noted in Monteforte's February 5, 1980 letter to plaintiff's counsel.

Whether or not the remaining defendants have violated plaintiff's right to due process depends upon an analysis of the factors set forth in *Mathews, supra.* Since minimum procedural requirements are a matter of federal law, the existence or non-existence of state procedures does not control. *Vitek v. Jones,* 445 U.S. 480, 491 (1980). Thus, as noted earlier, the state's contention that no hearing is necessary since none is provided by statute for a person seeking a permit is in error.

Plaintiff has a property interest in his billboards and in the use of property in which he has a legal interest of some kind. At least "*some* form of hearing" is required before a punitive owner may be finally deprived of a protected property interest. *Roth, supra,* at 570-71 n. 8 (emphasis in original). As discussed above, the form of

hearing and the timing of hearing is flexible, as long as plaintiff is accorded an opportunity to be heard at a meaningful time and in a meaningful manner. *Parratt v. Taylor*, 451 U.S. 527, 540 (1981) (citation omitted). In the instant case, plaintiff did not challenge in his amended complaint the adequacy of the state's procedures affording him a hearing. Rather, plaintiff alleged that the state denied him due process by failing to continue a hearing which had been started. It was only when the court started questioning the state as to the basis for such a hearing and as to the contours of that hearing that plaintiff belatedly challenged the hearing which he was seeking to have continued.

As discussed earlier, since the state owned the other parcels in question and the issue of ownership had finally been determined in the courts, there was no violation of due process in rejecting plaintiff's applications for permits and in seeking to remove billboards located on state property. If there had been a question as to the location of the billboards, defendants would have to have afforded plaintiff an opportunity to show that he was not encroaching on state property.[7] Plaintiff, however, has not shown that there was a dispute at that time concerning the location of the billboards, as opposed to a dispute concerning the ownership of the parcels on which the billboards were located.

Based upon the undisputed facts contained in the record, the court holds that the procedures followed by the state in this instance did not violate due process. All parties agree that a permit was required for the billboards. Since no permit had been secured, there was ample justification for the state to notify plaintiff of a violation. For those parcels and for others on which no

billboards had been erected, the application form itself requires that an applicant have permission of the owner to erect or maintain billboards. The validity of that requirement cannot be doubted. Since the state had good reason to believe that it was the owner of the parcels in question, it had good reason to reject the applications or at least to require plaintiff to offer some documentation that he had the permission of the "owner" of the parcels. Even if plaintiff had possessed an ownership interest in the parcels, the state may refuse to issue a permit or move to destroy the billboards if the applicant has failed to comply with a reasonable procedural or evidentiary requirement, in this case, the filing of some documentation as to ownership or permission to use the land. *See Logan, supra,* at 437 *and cases cited therein. See also Holman, supra,* at 7 & n. 3. Since the undisputed affidavits indicate that plaintiff did not submit any documentation, defendants did not violate due process by refusing his application or threatening to remove the billboards.

Plaintiff has contended that the state was required under the circumstances to bring a quiet title action before removing any billboards. The court cannot accept this contention. First, it is clear that despite the state's contention that plaintiff's failure to supply it with proof of ownership is an "admission" of state ownership, the state had no authority to make such a determination. The state could, however, have deemed failure to supply it with information an admission that plaintiff did not have permission to use the parcel for purposes of plaintiff's application for permits on that parcel. Thus, the state's determination of ownership by default, if it in fact made such a determination, cannot be legally binding.

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Second, to require a quiet title action, a formal judicial procedure, prior to putting administrative machinery to work, would cause unnecessary delay and expense to all parties under the circumstances. If in fact an applicant had submitted at least some documentation to contest the state's ownership of a parcel, due process may require the initiation of a quiet title action prior to the state removing billboards. Regardless of the level of proof of a dispute necessary to force a quiet title action, in this case plaintiff did not submit any evidence indicating that an actual dispute existed. In addition, by conferring with plaintiff's counsel and reaching an agreement as to the manner in which plaintiff would offer proof of his entitlement to erect or maintain billboards, defendants satisfied the requirements of due process. At least at the initial stage of the proceedings, more than this informal agreement was not necessary. There is nothing in the record to contradict Monteforte's certification that the parties agreed to what was set forth in the February 5, 1980 letter.

Even if the parties had not agreed to what was set forth in the letter, the Supreme Court "has determined that the requirements of due process can be satisfied with the provision of informal meetings between a claimant and a person empowered to grant or deny the claim." *Holman, supra,* at 18 (citations omitted). In *Memphis Light, Gas & Water Div'n v. Craft,* 436 U.S. 1, 16 n. 17 (1978), the court stated that the "opportunity for informal consultation with designated personnel empowered to correct a mistaken determination constitutes a 'due process hearing' in appropriate circumstances." Thus, the concept of due process does not require a state agency to institute a formal

proceeding with all the trappings such a proceeding entails prior to an applicant indicating in writing that a real dispute even exists. Plaintiff's failure to submit documentation of a claim provided the state with ample justification to deny applications for permits until that documentation was submitted to them.

Any belated challenge to the adequacy of the state procedures will be denied because the procedures offered to plaintiff at the time in question and the informal agreement to which plaintiff consented satisfied due process. In *Hagen v. Traill County*, _____ F.2d _____, No. 82-1785 (8th Cir. June 6, 1983) (*per curiam*), plaintiff brought a civil rights action against various municipal officials for destroying his buildings and personal property without affording him due process. Township officials notified plaintiff that his property presented a health hazard and instructed him to abate the hazards or that property would be destroyed. Plaintiff was permitted to discuss the conditions of the parcel of land with township supervisors. After a few months had passed, and plaintiff was again warned, the township abated the nuisance and buried the debris located on plaintiff's property.

The district court dismissed plaintiff's claim that he was not given adequate procedural protection in that he was given insufficient notice and hearing prior to destruction of his mobile home and its contents by the county. In affirming the district court, the Eighth Circuit noted that plaintiff had been notified by letters of the county's intent to take action and was given an opportunity to abate the nuisance. Plaintiff did not request further hearings on the matter. The Eighth

Opinion No. 80-531, Judge Thompson September 28, 1983.

Circuit rejected plaintiff's contention that he was denied due process in that the applicable state statute made no provision for notice or an opportunity to be heard before the county. In reaching its decision, the court stated: " '[I]f there is no constitutional defect in the application of the statute to a litigant, [there is] not . . . standing to argue that it would be unconstitutional if applied to third parties in hypothetical situations.' " *Id.*, slip op. at 3, *quoting County Court of Ulster County v. Allen*, 442 U.S. 140, 155 (1979).

Thus, not only did the state not deny due process by rejecting plaintiff's application and continuing to threaten to remove plaintiff's billboards because plaintiff had not submitted proof of entitlement to such billboards, but under these circumstances, plaintiff also may not challenge the adequacy of the state procedures.

Since the suit has been filed, plaintiff has submitted to this court some documentation of his claim to use parcel L2R. As far as this complaint is concerned, however, plaintiff was not denied due process at the pertinent time. The court will enter an appropriate order dismissing the amended complaint.

September 22, 1983

Opinion No. 80-531, Judge Thompson September 28, 1983.

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[1] N.J.A.C. 16:41-8.12, entitled notice of revocation of license or permit, allows a licensee or permittee to file a protest and to request a hearing when he has been notified that he has violated N.J.A.C. 16:41-8.11, which defines the bases for revocation of a license or permit. Since plaintiff does not hold a permit, the regulations do not provide for an administrative hearing for persons in plaintiff's position. *See Southern New Jersey Newspapers, supra,* at 178 n. 9.

[2] The Superior Court of New Jersey, not the Department of Transportation, can properly determine the question of title. Documents submitted by defendants to the court indicate rather generally that the hearing was to determine plaintiff's entitlement to a permit for the billboards. A letter from the hearing examiner indicates that the state was expected to show its interest in the parcel and plaintiff would be given an opportunity to present evidence indicating his right to a permit.

[3] Of course, if the state had acquired the parcel under the Act, plaintiff would not have been entitled to maintain any signs on the parcel since it fell within the right-of-way.

[4] Technically, the issue of the location of the billboards was not before the federal court in Civ. No. 77-1531. However, as noted earlier, the complaint in that matter, as well as the verified petition for temporary restraints in this matter, establish that the billboards are located on the parcels in question, including L2R.

[5] While it may appear obvious that plaintiff's counsel had mistakenly believed that all issues that would have been presented to the hearing examiner were raised in the court proceedings, including the status of L2R, such a finding cannot of course be made on a motion for summary judgment.

[6] Plaintiff has recently informed the court that defendants have abandoned condemnation proceedings concerning this parcel. The state had initiated condemnation proceedings against this parcel in 1972.

[7] "The right to be heard does not depend upon an advance showing that one will surely prevail at the hearing. 'To one who protests against the taking of his property without due process of law, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits.' " *Fuentes, supra,* at 87, *quoting Coe v. Armour Fertilizer Works,* 237 U.S. 413, 424 (1915).

NEW JERSEY STATE POLICE — OPERATIONS REPOR

1. Station / [redacted]	2. Code	3. Incident	4. Date	5. Time	6. Case Number
Tuckerton	A12	Assist NJ DOT	9-30-83	8AM AM ☐ PM ☐	09-62R

7. Victim / [redacted]	7A. D.O.B.	7B. S.S. Number
State Of New Jersey		

8. Address	8A. Phone (Area Code)
Dept of Transportation	

9. Location of Incident (Street / Highway)	9A. Municipality	9B. County	9C. Mun. Code
SH #72 Stafford Twp	Manahawkin	Ocean	1530

10. VEHICLE INFORMATION	Make	Year	Body Type	Color	Registration	Vehicle Identification Number

11.

12.

13.

14. NARRATIVE

This date Sgt. F.Klimecke #1892 and Tpr.1 T. Braddock both of the Tuckerton Barracks were detailed by Capt. Charles J. Dalton, Troop "A" Commander to assist NJ DOT regarding the removal of illegally located billboard signs along both sides of SH #72.

Proceeded with Tpr. Braddock to the above location, met with Supervisor Donald Hendrickson, NJ DOT and along with John Netterman Supervisor of NJ DOT Highway and Roadside Use and their crew of men work commenced with the removal the above signs, Mayor of Stafford Twp., Wesley Bell also owner of WES OUTDOOR ADV. CO. had constructed at 7 different locations the billboards and same had been ordered removed by US District Court Judge Ann Thompson.

Wesley Bell arrived at the scene almost immediately with Stafford Twp Building Inspector Louis Raupp who posted on one of the billboards a work stoppage order, same being disregarded. Mr. Bell was advised that only an injunction from the court would be obeyed, the work continued. Bell attempted to get an injunction from the court but was unsuccessful.

It should be noted that no incidents or problems were encountered.

PHONE NUMBERS
Hendrickson-----597-2166
Netterman-------292-4247
Raupp-----------597-8271
Bell------------597-3222
Deputy AD Nicholas Monteforte.

15. Rank / Name (Print or Type)	16. Badge No.	17. Page	18. Date	19. Reviewed By	20. Pending	21. Complet
Sgt. F.Klimecke Signature F.Klimecke	1892	1 of 1 Pages	9-30-83	FK		XXX

S.P. 178 (3-81)

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Order Denying Stay No. 80-531,
October 6, 1983

ORDER DENYING STAY OF JUDGMENT

Original Filed
Oct 6 1983
Allyn Z. Lite, Clerk

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for Defendants
Richard J. Hughes Justice Complex
CN 114
Trenton, New Jersey 08625
(609) 292-5937

UNITED STATES DISTRICT COURT
District of New Jersey

Civil Action No. 80-531

Hon. Anne E. Thompson, U.S.D.J.

WESLEY K. BELL, Individually and d/b/a
WES OUTDOOR ADVERTISING CO.,
Plaintiff,

vs.

STATE OF NEW JERSEY, JOHN J. DEGNAN,
DOROTHY ANDRES and NEW JERSEY
DEPARTMENT OF TRANSPORTATION,
Defendants.

Order Denying Stay No. 80-531, October 6, 1983.

This matter having been opened to the court by Sterns, Herbert & Weinroth, P.A., attorneys for plaintiff (Richard M. Hluchan, Esquire, appearing) and Irwin I. Kimmelman, Attorney General of New Jersey, attorney for defendants (by Richard J. Harcar, Deputy Attorney General) appearing in opposition, and the court having considered the motion, affidavits and oral argument of counsel, for the reasons expressed in open court, and for good cause, it is hereby ORDERED on this 6th day of Oct, 1983, that the plaintiff's motion for an order staying the judgment of the court dated September 28, 1983, pending appeal to the United States Court of Appeals for the Third Circuit, and for an injunction restraining defendants from removing any billboards owned by plaintiff located along New Jersey Route 72 in Ocean County, New Jersey, is denied.

ANNE E. THOMPSON
Anne E. Thompson, *U.S.D.J.*

Order No. 83-5760, Third Circuit
June 15, 1984

JUDGMENT ORDER

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 83-5760

WESLEY K. BELL, Individually and d/b/a
Wes Outdoor Advertising Co.,

Appellant,

vs.

STATE OF NEW JERSEY, JOHN J. DEGNAN,
DOROTHY ANDRES and NEW JERSEY
DEPARTMENT OF TRANSPORTATION.

(D.C. Civil No. 80-0531)

On Appeal From the United States District Court
for the District of New Jersey.

(Hon. Anne E. Thompson, *District Judge*)

Submitted: May 14, 1984
Before: GIBBONS, GARTH and MARIS,
Circuit Judges

WESLEY K. BELL, *Pro Se*
188 Route 72
P. O. Box 538
Manahawkin, New Jersey 08050

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Richard J. Hughes Justice Complex
CN 112
Trenton, New Jersey 08625

Order No. 83-5760, Third Circuit June 15, 1984.

Of Counsel:
JAMES J. CIANCIA
Assistant Attorney General

On the Brief:
NICKOLAS F. MONTEFORTE
Deputy Attorney General
Attorneys for Appellee

The court having considered the briefs of the parties in light of the record, it is

ORDERED, ADJUDGED and DECREED:

1. That the motion of the State of New Jersey to strike plaintiff's brief and appendix be and the same is hereby denied;

2. That the motion of the State of New Jersey to dismiss appeal for lack of prosecution be and is hereby denied;

3. That the motion by appellant for leave to file supplemental appendix be and is hereby granted;

4. That the motion by appellant for leave to file an enlarged reply brief out of time be and is hereby granted;

5. That the motion by the State of New Jersey for an enlargement of time to file its brief be and is hereby granted;

6. That the motion by appellant to file additional materials be and is hereby denied as moot;

Order No. 83-5760, Third Circuit June 15, 1984.

7. That the judgment appealed from be and is hereby affirmed.

Costs taxed in favor of the appellees, not including the motions.

BY THE COURT,

JOHN J. GIBBONS
Circuit Judge

Affirmed:

SALLY MRVOS
Sally Mrvos, *Clerk*

Dated: Jun 15 1984

Rehearing Denied No. 83-5760, July 24, 1984

SUR PETITION FOR REHEARING

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 83-5760

WESLEY K. BELL, individually and d/b/a
Wes Outdoor Advertising Co.,

Appellant,

vs.

STATE OF NEW JERSEY, JOHN J. DEGNAN,
DOROTHY ANDRES and NEW JERSEY
DEPARTMENT OF TRANSPORTATION.

(D.C. Civil No. 80-0531)

Present: ALDISERT, *Chief Judge*, SEITZ, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, BECKER and MARIS, * *Circuit Judges.*

The petition for rehearing filed by appellant in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court *in banc*, the petition for rehearing is denied.

By the Court,

JOHN J. GIBBONS
Judge

Dated: Jul 24 1984

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* As to panel rehearing only.

Order Extending Time No. A-312, October 25, 1984

SUPREME COURT OF THE UNITED STATES

No. A-312

WESLEY K. BELL,

Petitioner,

vs.

NEW JERSEY, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including December 12, 1984.

/s/ William J. Brennan, Jr.
Associate Justice of the Supreme
Court of the United States

Dated this 25th
day of October, 1984

Notice of Appeal No. 83-5760, July 30, 1984

NOTICE OF APPEAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

DOCKET NO. 83-5760

WESLEY K. BELL, individually and d/b/a
WES OUTDOOR ADVERTISING CO.,
Appellant.

vs.

STATE OF NEW JERSEY, et al,
Appellees.

Received
JUL 30, 1984
U.S.C.A. 3RD Cir.

Notice is hereby given that WESLEY K. BELL, individually and d/b/a WES OUTDOOR ADVERTISING CO., plaintiff appellant above named, hereby appeals to the Supreme Court of the United States, "paragraph number seven" of the judgment entered on June 15th., 1984 and from the denial of rehearing on July 24th., 1984.

WESLEY K. BELL
Wesley K. Bell, *pro se*
P.O. Box 538—188 Rt. #72
Manahawkin, N.J. 08050

STAFFORD TOWNSHIP POLICE DEPARTMENT

PRELIMINARY REPORT

1. Complaint No: 10918-84	2. Mun. Code: 1830	3. Phone No: 597-8581	4. UCR: 2664	21. Prosecutor's Case Number	22. Department Case Number: 10918-84	
5. Crime/Incident: Property Dispute	6. NJS			23. Victim/s/ Accused: State of New Jersey, D.O.T., Wes Bell Sign Co.	24. Age	25. Sex / 26. Race
DATE AND TIME: 7. Between / At: X	8. Hour: 11:00	9. Day: Th	10. Mo.: 10	11. Date: 25	12. Yr.: 84	27. Victim/s/ Home Address / Phone
13. Crime/Incident Location: area akjacent to Route 72 (South side), M.P.23.0				28. Employer / Phone		
14. Municipality: STAFFORD	15. County: OCEAN	16. Code: 1538		29. Person Reporting Crime/Incident: Wes Bell	30. Date and Time: 10-25-84 11:00hrs	
17. Type of Premises: open country	18. Code: 05	19. Weapons - Tools: N/A	20. Code	31. Address: Route 72, Manahawkin, NJ	Phone: 597-3222	
32. Stolen Operated: N/A				32A. Recovered By: N/A		
33. Vehicle	34. Year	35. Make	36. Body Type	37. Color	38. Registration Number and State	39. Serial Number or Identification
VALUE STOLEN PROPERTY: 40. Currency	41. Jewelry	42. Furs	43. Clothing	44. Auto	45.	
46. Total Value Stolen	47. Total Value Recovered	48. Teletype Alarm	49. Technical Services	50. Technician-Agency		
51.	52.	53.	54	55	56	
57.	58.	59.	60	61	62	

List Accused - List and Identify Additional Victims - Describe Perpetrators or Suspects - Action Taken: Include Findings and Observations of Investigator - Physical Evidence Found - Where By Whom - Disposition and Technical Services Performed - Interview of Victims - Witness - Persons Contacted - Accused Suspects - List - Describe Stolen Property - Value - Court Action - Attach Statements

63. Arrested Accused	64. Adult	65. Juvenile	66. Status Crime	67. Status Case	68. UCR Status: Month 10 Year 84	69. Date Cleared
Name	Address				70. Age / 71. Sex / 72. Race / 73. DOB	

On Thursday, October 25, 1984, the undersigned officer was dispatched by Chief Larry D. Parker to Route 72 approximate milepost 23.0. This location has been the point of a dispute over ownership of the land on which approximately 12 telephone poles are located. These poles are erected so as to form a large "V" pointing toward Route 72. At this time, there is no advertising on the poles.

Upon my arrival, I observed several dump trucks, a front end loader and a large crane. All of these vehicles were owned by the New Jersey Department of Transportation. There were approximately 20 Department of Transportation employees present under the supervision of Mr. Robert Micai, Supervisor of Outdoor Advertising, Roadside Use and Highway Marking. Accompanying the D.O.T. employees was Sgt. D. Scalley, New Jersey State Police, assigned to the Tuckerton Barracks. Also present was Stafford Township Administrator Fred Smith.

It appears that the D.O.T. employees had intentions of removing the sign poles. Mr. Bell objected to these intentions based on his contentions that he is the owner of the land on which the poles are situated.

Mr. Micai produced several documents establishing ownership of the land by the state of New Jersey. Mr. Bell also porpduced documents dating back to the early 1960's establishing him as the rightful owner of the land.

In reviewing the states documents, there arose some descrepencies as to the exact location of the land in question. Due to these descrepencies, all parties agreed to curtail the planned removal of the sign poles pending further court action and/or an updated land survey.

Signature of Complainant

75. Name	76. Badge Number	77.	78. Date Report	79. Reviewed By
Officer Raymond M. Bohn	#1	Page 1 of 1 Pages	10-31-84	RMB/nsj
Signature: Officer Raymond M. Bohn		80.	81.	82.

STPD 001

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Stafford Township Police Report, October 31, 1984

Bell wins one in new billboard battle

Tract ownership is questioned and causes delay

By NEIL A. SHEEHAN
News Editor

MANAHAWKIN — It began almost the same way as a scene played out slightly more than a year ago but this time the results were different.

Early last Thursday morning, a state Department of Transportation work crew arrived at the site of a partially constructed billboard on Route 72 near the southbound exit to Route 9 and owned by former Stafford Township Mayor Wesley K. Bell.

Ordered by the state to remove pilings erected for the sign because they allegedly encroach on state property, the crew of about 15 brought with it a crane, several trucks and assorted equipment to perform the task. A State Police officer also accompanied the crew.

Bell, owner of the Wes Outdoor Advertising Co., arrived at the scene as the crew was about to begin work and convinced DOT supervisor John Nettleton and State Trooper David Scalley of the Tuckerton Barracks to wait until he could obtain proof that he owned the site and that the action was improper.

When Bell returned, he brought with him documents from his long-term legal battle with the state over the site. Bell argued that the order

Continued on page 6



Times-Beacon photo by Neil A. Sheehan

Former Stafford Mayor Wesley K. Bell, owner of Wes Outdoor Advertising, searches his records for deed to property on Route 72 to prevent state from removing billboard pilings, while State Police Sgt. David Scalley waits behind Bell.

Billboard

Continued from page 1

the crew had to remove the sign was incorrect because the courts had not ruled on the property.

"You have no notice on this piece of property," Bell told the officials.

"This is what I agree with," Scalley responded, holding up the order.

"You're misintrepeting this," Bell challenged.

"This is my interpretation," Scalley said.

After examining more of Bell's papers and conferring with Nettleton, Scalley advised the crew to leave because it did not have enough proof to back up its order. He warned Bell, however, that the crew would return with a more specific order and someone familiar with the case.

"The issue is when we come back next time we're going to have the necessary paperwork to do the necessary work," Scalley said. "We'll also have someone who knows more about this case. As it stands right now, we don't have the order we need."

Township Administrator Fred Smith and Zoning Officer Martha Kremer also were present at the site.

In September 1983, a DOT crew cut down a sign that stood on the site along with 17 others after a U.S. District Court judge ruled that the state had acted properly when it took over the properties in 1970 as part of a highway beautification program.

Bell, insisting that the site at Route 72 and the southbound exit to Route 9 was not included in the court's ruling, began rebuilding it last spring.

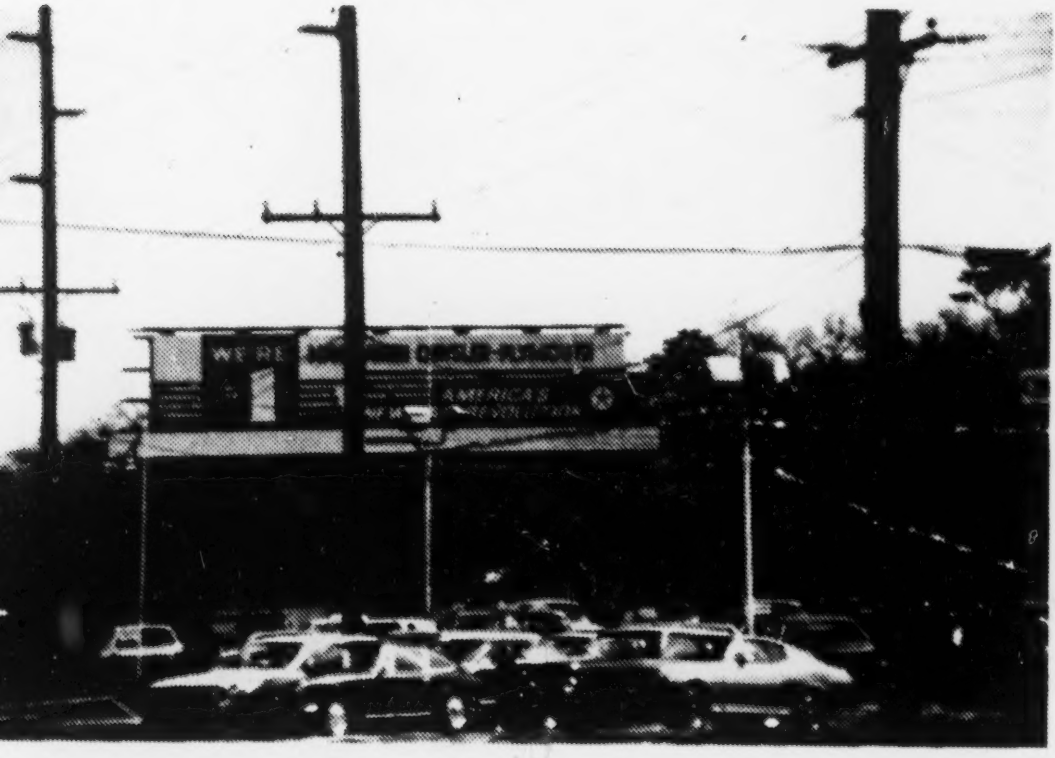
Township officials charged that the construction was illegal and took Bell to court to halt work on the sign. A Superior Court judge ruled that no signs could be placed on the pilings until the matter was resolved.

Photos of Destruction, September 30, 1983



The above photo shows State employees, in the midst of billboard destruction, with protection of Uniformed State Police, destroying billboards on private property, with no legal right of access, on September 30th, 1983, against Plaintiff's objections. These billboards *are licensed* by the State of New Jersey and are on Parcel #L22B, which was exempted from condemnation over twelve years ago, on June 15th, 1972; again on February 9th, 1973 and even further, on June 11th, 1974. (see pages 130a, 131a, 133a).

Photos of Destruction, September 30, 1983.



PARCEL #L2R-31D

The State of New Jersey withheld advertising permits for these handpainted billboards, claimed ownership and ordered Plaintiff-Appellant to remove these billboards or they would destroy them from 1968 to 1983. Plaintiff has produced evidence, beyond any doubt, before Judge Thompson, that the State had no legal right of entry, on this site.

Photos of Destruction, September 30, 1983.



BEFORE

The above photo shows handpainted billboards, prior to State's demolition, on Parcel #L11B.

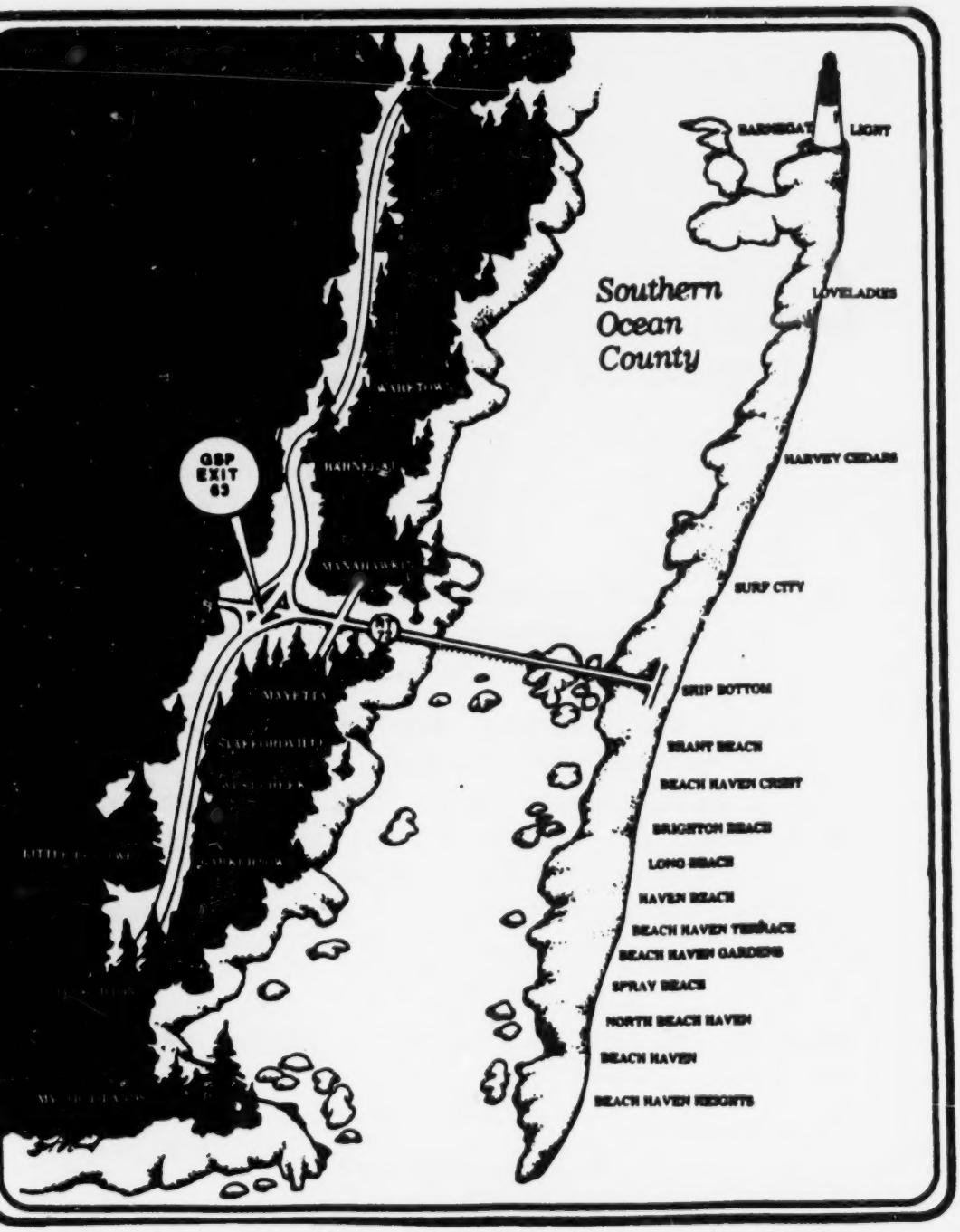
Photos of Destruction, September 30, 1983.



AFTER

The above photo shows billboards, after State destroyed them without notice, on September 30th, 1983, on Parcel #L11B.

Map of Southern Ocean County



Map shows area along Route #72, between the Garden State Parkway and Long Beach Island, where Plaintiff-Appellant derives 80% of his business income, on billboards located along this six mile stretch of a thriving, zoned business area. Route #72 is the only access road to Long Beach Island.

Letter, Re-Location Funds, November 4, 1970

STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION
1035 Parkway Avenue
Trenton, New Jersey 08625

John C. Kohl
Commissioner

November 4, 1970

In Reply To Route 72, Section 6
Wesley K. Bell and Wes Outdoor Advertising Co.

Mr. Wesley K. Bell
113 Longbeach Boulevard
Northbeach, New Jersey

Dear Mr. Bell:

A copy of Mr. Alfano's letter to you dated October 21, 1970 has been referred to this office to reply to your comments concerning relocation payments.

Our records indicate that you have been contacted personally on many occassions by Mr. Delaney and representatives of the freehold office concerning the billboards owned by you on the approval premises. I am sure Mr. Delaney has indicated that there is pending legislation concerning relocation payment for billboards, but to this date, we have no authority to proceed with same.

As soon as the appropriate authorization to make payment has been given, Mr. Delaney and/or his representatives will contact you.

Very truly yours,

LESTER G. FINCH
Supervisor—Area 2
Bureau of Property and Relocation

LGM;jl
s/

Letter Advising of Elimination, Parcel No. L-22B, June 15, 1972

Hartman, Schlesinger & Schlosser
Attorneys at Law

Daniel Lichtenthal
of Counsel

129 High Street
Mount Holly, New Jersey 08060

—

Francis J. Hartman
Jan M. Schlesinger
Marvin E. Schlosser
Alfred A. Faxon, III
Arnold Golden
Robert A. Porter

609-267-3050

—

131 Bridgeboro Street
Riverside, New Jersey 08075

—

609-461-0266

Please Reply To Mount Holly

June 15, 1972

Mr. Wesley K. Bell
P.O. Box 538
Manahawkin, New Jersey

Dear Wes:

I have been formally advised by a Mr. Schultz that they are eliminating the following parcels from their condemnation plans along Route #72. I understand this is generally in connection with the abandonment of the Beautification Easement. The parcels involved are Section 6, L-22b, 23b, 23c, 24b, 39 and 40.

I have been hearing very favorable comments about your performance as Mayor.

Best regards,

JAN
Jan M. Schlesinger

JMS:cmh

Letter Advising Parcel No. L-22B Has Been Deleted February 9, 1973

(Seal)

In Reply Please Refer To

Route 72, Stafford Township
Highway Beautification
Program

STATE OF NEW JERSEY

DEPARTMENT OF TRANSPORTATION
1035 Parkway Avenue
Trenton, New Jersey 08625

John C. Kohl
Commissioner

February 9, 1973

Honorable Wesley K. Bell
Mayor, Stafford Township
Ocean County
775 East Bay Avenue
Manahawkin, New Jersey 08050

Dear Sir:

At our meeting on February 1, 1973, it was agreed that the Department would check on certain parcels where you indicated that changes in the L-Parcels had been made that did not appear on the maps used during the meeting.

There has been no change to Parcel L35D on Section 7 of Mill Creek Road.

Parcel L2R31D has not been increased from as 60' taking depth to a 100' depth.

Letter Advising Parcel No. L-22B Has Been Deleted, February 9, 1973.

On Section 6, along the ramp from Route 72 eastbound to Route 9 southbound, eight-tenths of an acre consisting of parcels L22B, L23B, L23C, L24B, L39 and L40 has been deleted.

At this meeting, you requested that the Department withdraw the Highway Beautification Program along Route 72. It has been determined that the Department will not withdraw this program. Acquisition of project right of way will continue as planned.

Yours very truly,

CLARENCE R. PELL
Clarence R. Pell
Chief, Bureau of Landscape

Letter Advising Order for Abandonment, Parcel L22B, June 11, 1974

(Seal)

STATE OF NEW JERSEY

DEPARTMENT OF LAW AND PUBLIC SAFETY
Division of Law
Transportation Section
1035 Parkway Avenue
Trenton 08625

William F. Hyland
Attorney General

Stephen Skillman
First Assistant
Attorney General

June 11, 1974

Honorable Edward V. Martino
Judge of the Superior Court
Burlington County Office Building
Mount Holly, New Jersey 08061

Re: State of New Jersey v. Wesley K. Bell, et al
Docket No. L-36137-72 (C-2643-73)

Dear Judge Martino:

The Order to Appoint Commissioners for the condemnation of parcels in the above mentioned matter was originally set down for Friday, June 14, 1974. At this time, the Department of Transportation is unable to finance the acquisition of these parcels. Pursuant to our telephone conversation on this date, I have contacted my adversary, and we will enter an Order for Abandonment. Hence, there will be no need for any appearance in Court on June 14, 1974.

Letter Advising Order for Abandonment, Parcel L22B. June 11, 1974.

Concerning the incidental matters that have arisen before Judge Wiley in Chancery, I will adjourn these matters also as there is a strong possibility of settlement.

Thank you for your cooperation in this matter.

Respectfully yours,

WILLIAM F. HYLAND
Attorney General of New Jersey
By: s/ _____
Fredric R. Cohen
Deputy Attorney General

FRC:lt
cc: Edward K. Burdge
Ocean Co. Clerk

William L. Gee, Esq.

Letter Refusing to Produce Witnesses, March 9, 1978

STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION
1035 Parkway Avenue
Trenton, New Jersey 08625

March 9, 1978

MICHAEL H. MALIN, ESQ.
WHITE & WILLIAMS
17th Floor
234 Market Street
Philadelphia, Pennsylvania 19107

Re: Sign Encroachment;
Nos. 3SE9-88, 3SE9-86, 3SE9090, 3SE9-91,
3SE9-92, 3SE9-93, 3SE9-89
Wesley K. Bell

Dear Mr. Malin:

I regret to inform you that the State of New Jersey, Department of Transportation, cannot honor your request to produce Vincent R. Stolowski, Clarence Pell, Joseph Cunningham, and Worth Cunningham in connection with the alleged proceedings in the above matter. The Issues which are before the Hearing Examiner are narrow in scope and pertain only to the matter of title to the real property involved and whether or not there is an encroachment on state property. The above parties have no involvement with the particular facts which are at issue herein, and, with the exception of Mr. Worth Cunningham, took no part in either the investigation or preparation of this matter and will have no function as witnesses herein. Mr. Worth

Letter Refusing to Produce Witnesses, March 9, 1978.

Cunningham's testimony will be limited to his signing of the letters to your client, which letters constitute the notices of encroachment. He will be presented as a witness for the limited purpose of testifying to this singular activity.

When the hearing reconvenes, the Department of Transportation anticipates continuing with its proofs as to title to the property in question and the location of encroachments on this property.

Very truly yours,

JOHN J. DEGNAN
Attorney General for the
State of New Jersey

By: _____
Nickolas F. Monteforte
Deputy Attorney General

NSM;lt

Loss of Advertising, Parcel #L2R-31D

Subject: Loss of Advertising Revenue Because of State's Refusal to Consider for Issue Advertising Permits on Parcel L2R-31D.

September 1968—September 1969
Eastbound $1,400.00
Westbound $1,400.00
Total $ 2,800.00

September 1969—September 1970
Eastbound $1,500.00
Westbound $1,500.00
Total $ 3,000.00

September 1970—September 1971
Eastbound $1,800.00
Westbound $1,800.00
Total $ 3,600.00

September 1971—September 1972
Eastbound $2,600.00
Westbound $2,600.00
Total $ 5,200.00

September 1972—September 1973
Eastbound $3,000.00
Westbound $3,000.00
Total $ 6,000.00

September 1973—September 1974
Eastbound $3,000.00
Westbound $3,000.00
Total $ 6,000.00

September 1974—September 1975
Eastbound $3,500.00
Westbound $3,500.00
Total $ 7,000.00

Loss of Advertising, Parcel #L2R-31D.

September 1975—September 1976
Eastbound $3,500.00
Westbound $3,500.00
Total $ 7,000.00

September 1976—September 1977
Eastbound $3,600.00
Westbound $3,600.00
Total $ 7,200.00

September 1977—September 1978
Eastbound $4,200.00
Westbound $4,200.00
Total $ 8,400.00

September 1978—September 1979
Eastbound $4,300.00
Westbound $4,300.00
Total $ 8,600.00

September 1979—September 1980
Eastbound $4,500.00
Westbound $4,500.00
Total $ 9,000.00

September 1980--September 1981
Eastbound $5,000.00
Westbound $4,500.00
Total $ 9,500.00

Loss of Advertising, Parcel #L2R-31D.

September 1981—September 1982

Eastbound $5,000.00

Total $ 5,000.00

Eastbound sign finished
October 12, 1981
Westbound sign finished
August 1981

Total Loss of Income on this Parcel $88,300.00

Interest to be added at a future date of Judgment when a Trial on the Merits is heard. $_____

Public Law 91-646

ATTACHMENT #1—SECTION V

(Seal)

PUBLIC LAW 91-646
91st Congress, S. 1
January 2, 1971

AN ACT

84 STAT. 1894

To provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970."

Uniform Relocation Assistance and Land Acquisition Policies Act of 1970.

TITLE I—GENERAL PROVISIONS

Definitions.

Sec. 101. As used in this Act—

(1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve banks and branches thereof.

(2) The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any

territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(3) The term "State agency" means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States.

(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia.

(5) The term "person" means any individual, partnership, corporation, or association.

(6) The term "displaced person" means any person who, on or after the effective date of this Act, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal Agency, or with Federal financial assistance; and solely for the purposes of sections 202(a) and (b) and 205 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

(7) The term "business" means any lawful activity, excepting a farm operation, conducted primarily—

(A) for the purpose, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(B) for the sale of services to the public;

(C) by a nonprofit organization; or

(D) solely for the purposes of section 202(a) of this title, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display [2] or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

84 STAT. 1895

(8) The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(9) The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

Effect Upon Property Acquisition

Sec. 102. (a) The provisions of section 301 of title III of this Act create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

(b) Nothing in this Act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to the date of enactment of this Act.

TITLE II—UNIFORM RELOCATION ASSISTANCE

Declaration Of Policy

Sec. 201. The purpose of this title is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

Moving And Related Expenses

Sec. 202. (a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after the effective date of this Act, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property:

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency; and

(3) actual reasonable expenses in searching for a replacement business or farm.

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a moving expense allowance, determined according to a schedule established by the head of the Federal agency, not to exceed $300; and a dislocation allowance of $200.

[3] 84 STAT. 1896

(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section, may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than $2,500 nor more than $10,000. In the case of a business no payment shall be made under this subsection unless the head of the Federal agency is satisfied that the business (1) cannot be relocated without a substantial loss of its existing patronage,

and (2) is not a part of a commercial enterprise having at least one other establishment not being acquired by the United States, which is engaged in the same or similar business. For purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the head of such agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.

Replacement Housing For Homeowner

Sec. 203. (a)(1) In addition to payments otherwise authorized by this title, the head of the Federal agency shall make an additional payment not in excess of $15,000 to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(A) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the Federal agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to

accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subparagraph shall be made in accordance with standards established by the head of the Federal agency making the additional payment.

(B) The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the Federal agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of the amount of the principal of the mortage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder-term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area which the replacement dwelling is located.

[4] 84 STAT. 1897

(C) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the placement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this subsection shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one year period beginning on the date on which he receives from the Federal agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

(b) The head of any Federal agency may, upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any Federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage.

Replacement Housing For Tenants And Certain Others

Sec. 204. In addition to amounts otherwise authorized by this title, the head of the Federal agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 203 which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either—

(1) the amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed $4,000 or

(2) the amount necessary to enable such person to make a downpayment (including incidental expenses described in section 203(a)(1)(C)) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed $4,000, except that if such amount exceeds $2,000, such person must equally match any such amount in excess of $2,000, in making the downpayment.

Relocation Assistance Advisory Services

Sec. 205. (a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after the effective date of this section, the head of such agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (c) of this section. If such agency head determines that any person occupying

property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

[5] 84 STAT. 1898

(b) Federal agencies administering programs which may be of assistance to displaced persons covered by this Act shall cooperate to the maximum extent feasible with the Federal or State agency causing the displacement to assure that such displaced persons receive the maximum assistance available to them.

(c) Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

(1) determine the need, if any, of displaced persons, for relocation assistance;

(2) provide current and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(3) assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary

dwellings, as defined by such Federal agency head, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment, except that the head of that Federal agency may prescribe by regulation situations when such assurances may be waived;

(4) assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) The heads of Federal agencies shall coordinate relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs.

Housing Replacement By Federal Agency As Last Resort

Sec. 206. (a) If a Federal project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of the Federal agency determines that

such housing cannot otherwise be made available he may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project.

(b) No person shall be required to move from his dwelling on or after the effective date of this title, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 205(c)(3), is available to such person.

State Required To Furnish Real Property Incident To Federal Assistance (Local Cooperation)

Sec. 207. Whenever real property is acquired by a State agency and furnished as a required contribution incident to a Federal program or project, the Federal agency having authority over the pro-

[6] 84 STAT. 1899

gram or project may not accept such property unless such State agency has made all payments and provided all assistance and assurances, as are required of a State agency by sections 210 and 305 of this Act. Such State agency shall pay the cost of such requirements in the same manner and to the same extent as the real property acquired for such project, except that in the case of any real property acquisition or displacement occurring prior to July 1, 1972, such Federal agency shall pay 100 per centum of the first $25,000 of the cost of providing such payments and assistance.

State Acting As Agent For Federal Program

Sec. 208. Whenever real property is acquired by a State agency at the request of a Federal agency for a Federal program or project, such acquisition shall, for the purposes of this Act, be deemed an acquisition by the Federal agency having authority over such program or project.

Public Works Programs And Projects Of The Government Of The District Of Columbia And Of The Washington Metropolitan Area Transit Authority

Sec. 209. Whenever real property is acquired by the government of the District of Columbia or the Washington Metropolitan Area Transit Authority for a program or project which is not subject to sections 210 and 211 of this title, and such acquisition will result in the displacement of any person on or after the effective date of this Act, the Commissioner of the District of Columbia or the Washington Metropolitan Area Transit Authority, as the case may be, shall make all relocation payments and provide all assistance required of a Federal agency by this Act. Whenever real property is acquired for such a program or project on or after such effective date, such Commissioner or Authority, as the case may be, shall make all payments and meet all requirements prescribed for a Federal agency by title III of this Act.

Requirements For Relocation Payments And Assistance Of Federally Assisted Program; Assurances Of Availability Of Housing

Sec. 210. Notwithstanding any other law, the head of a Federal agency shall not approve any grant to, or contract or agreement with, a State agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of this title, unless he receives satisfactory assurances from such State agency that—

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under sections 202, 203, and 204 of this title;

(2) relocation assistance programs offering the services described in section 203 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings will be available to displaced persons in accordance with section 205(c)(3).

[7] 84 STAT. 1900

Federal Share Of Costs

Sec. 211. (a) The cost to a State agency of providing payments and assistance pursuant to sections 206, 210, 215, and 305, shall be included as part of the cost of a program or project for which

Federal financial assistance is available to such State agency, and such State agency shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs, except that, notwithstanding any other law in the case where the Federal financial assistance is by grant or contribution the Federal agency shall pay the full amount of the first $25,000 of the cost to a State agency of providing payments and assistance for a displaced person under sections 206, 210, 215, and 305, on account of any acquisition or displacement occurring prior to July 1, 1972, and in any case where such Federal financial assistance is by loan, the Federal agency shall loan such State agency the full amount of the first $25,000 of such cost.

(b) No payment or assistance under section 210 or 305 shall be required or included as a program or project cost under this section, if the displaced person receives a payment required by the State law of eminent domain which is determined by such Federal agency head to have substantially the same purpose and effect as such payment under this section, and to be part of the cost of the program or project for which Federal financial assistance is available.

(c) Any grant to, or contract or agreement with, a State agency executed before the effective date of this title, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective

date of this Act, shall be amended to include the cost of providing payments and services under sections 210 and 305. If the head of a Federal agency determines that it is necessary for the expeditious completion of a program or project he may advance to the State agency the Federal share of the cost of any payments or assistance by such State agency pursuant to sections 206, 210, 215, and 305.

Administration—Relocation Assistance In Programs Receiving Federal Financial Assistance

Sec. 212. In order to prevent unnecessary expenses and duplications of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons under sections 206, 210, and 215 of this title, a State agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this title through any Federal or State governmental agency or instrumentality having an established organization for conducting relocation assistance programs. Such State agency shall, in carrying out the relocation assistance activities described in section 206, whenever practicable, utilize the services of State or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

Regulations And Procedures

Sec. 213. (a) In order to promote uniform and effective administration of relocation assistance and land acquisition of State or local housing agencies, or other agencies having programs or projects by [8] 84 STAT. 1901 Federal agencies or programs or projects by State agencies receiving Federal financial assistance, the heads of Federal agencies shall consult together on the establishment of regulations and procedures for the implementation of such programs.

(b) The head of each Federal agency is authorized to establish such regulations and procedures as he may determine to be necessary to assure—

(1) that the payments and assistance authorized by this Act shall be administered in a manner which is fair and reasonable, and as uniform as practicable;

(2) that a displaced person who makes proper application for a payment authorized for such person by this title shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) that any person aggrieved by a determination as to eligibility for a payment authorized by this Act, or the amount of a payment, may have his application reviewed by the head of the Federal agency having authority over the applicable program or project, or in the case of a program or project receiving Federal financial assistance, by the head of the State agency.

(c) The head of each Federal agency may prescribe such other regulations and procedures, consistent with the provisions of this Act, as he deems necessary or appropriate to carry out this Act.

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Annual Report

Sec. 214. The head of each Federal agency shall prepare and submit an annual report to the President on the activities of such agency with respect to the programs and policies established or authorized by this Act, and the President shall submit such reports to the Congress not later than January 15 of each year, beginning January 15, 1972, and ending January 15, 1975, together with his comments or recommendations. Such reports shall give special attention to: (1) the effectiveness of the provisions of this Act assuring the availability of comparable replacement housing, which is decent, safe, and sanitary, for displaced homeowners and tenants; (2) actions taken by the agency to achieve the objectives of the policies of Congress, declared in this Act, to provide uniform and equal treatment, to the greatest extent practicable, for all persons displaced by, or having real property taken for, Federal or federally assisted programs (3) the views of the Federal agency head on the progress made to achieve such objectives in the various programs conducted or administered by such agency, and among the Federal agencies; (4) and indicated effects of such programs and policies on the public; and (5) any recommendations he may have for further improvements in relocation assistance and land acquisition programs, policies, and implementing laws and regulations.

Planning And Other Preliminary Expenses For Additional Housing

Sec. 215. In order to encourage and facilitate the construction or rehabilitation of housing to meet the needs of displaced persons who are displaced from dwellings because of any Federal or Federal financially assisted project, the head of the Federal agency administering such project is authorized to make loans as a part of the cost of any such project, or to approve loans as a part of the cost of any such project receiving Federal financial assistance, to nonprofit, limited

[9] 84 STAT. 1902

dividend, or cooperative organizations or to public bodies, for necessary and reasonable expenses, prior to construction, for planning and obtaining federally insured mortgage financing for the rehabilitation or construction of housing for such displaced persons. Notwithstanding the preceding sentence, or any other law, such loans shall be available for not to exceed 80 per centum of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing, prior to the availability of such financing, including, but not limited to, preliminary surveys and analyses of market needs, preliminary site engineering, preliminary architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. Loans to an organization established for profit shall bear interest at a market rate established by the head of such Federal agency. All other loans shall be without interest. Such Federal agency head shall require

repayment of loans made under this section, under such terms and conditions as he may require, upon completion of the project or sooner, and except in the case of a loan to an organization established for profit, may cancel any part or all of a loan if he determines that a permanent loan to finance the rehabilitation or the construction of such housing cannot be obtained in an amount adequate for repayment of such loan. Upon repayment of any such loan, the Federal share of the sum repaid shall be credited to the account from which such loan was made, unless the Secretary of the Treasury determines that such account is no longer in existence, in which case such sum shall be returned to the Treasury and credited to miscellaneous receipts.

Payments Not To Be Considered As Income

Sec. 216. No payment received under this title shall be considered as income for the purposes of the Internal Revenue Code of 1954; or for the purposes of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

68A Stat. 3.
25 USC 1 *et seq.*
49 Stat. 620.
42 USC 1305.

Displacement By Code Enforcement, Rehabilitation, And Demolition Programs Receiving Federal Assistance

Sec. 217. A person who moves or discontinues his business, or moves other personal property, or moves from his dwelling on or after the effective date of this Act, as a direct result of any project or program which receives Federal financial assistance

63 Stat. 414; 68 Stat. 622.
42 USC 1450 *et seq.*
80 Stat. 1255.
42 USC 3301 note.

under title I of the Housing Act of 1949, as amended, or as a result of carrying out a comprehensive city demonstration program under title I of the Demonstration Cities and Metropolitan Development Act of 1966 shall, for the purposes of this title, be deemed to have been displaced as the result of the acquisition of real property.

Transfers Of Surplus Property

Sec. 218. The Administrator of General Services is authorized to transfer to a State agency for the purpose of providing replacement housing required by this title, any real property surplus to the needs of the United States within the meaning of the Federal Property and Administrative Services Act of 1949, as amended. Such transfer shall be subject to such terms and conditions as the Administrator determines necessary to protect the interests of the United States and may be made without monetary consideration, except that such State agency shall pay to the United States all amounts received by such agency from any sale, lease, or other disposition of such property for such housing.

63 Stat. 377.
40 USC 471 note.

[10]

84 STAT. 1903

Displacement By A Specific Program

Sec. 219. Notwithstanding any other provision of this title, a person—

(1) who moves or discontinues his business, moves other personal property, or moves from his dwelling on or after January 1, 1969, and before the 90th day after the date of enactment of this Act as the result of the contemplated

demolition of structures or the construction of improvements on real property acquired, in whole or in part, by a Federal agency within the area in New York, New York, bounded by Lexington and Third Avenues and 31st and 32d Streets; and

(2) who has lived on, or conducted a business on, such real property for at least one year prior to the date of enactment of this Act;

may be considered a displaced person for purposes of sections 202 (a) and (b), 204, and 205 of this title, by the head of the agency acquiring the real property if—

(A) the head of the agency determines that such person has suffered undue hardship as the result of displacement from the real property; and

(B) the Federal Government acquired and held such property for at least five years prior to the date of enactment of this Act.

Repeals

Sec. 220. (a) The following laws and parts of laws are hereby repealed:

(1) The Act entitled "An Act to authorize the Secretary of the Interior to reimburse owners of lands required for development under his jurisdiction for their moving expenses, and for other purposes," approved May 29, 1958 (43 U.S.C. 1231-1234). 72 Stat. 152.

(2) Paragraph 14 of section 203(b) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473). 76 Stat. 384.

(3) Section 2680 of title 10, United States Code. 76 Stat. 511.

(4) Section 7(b) of the Urban Mass Transportation Act of 1965 (49 U.S.C. 1606(b)). 78 Stat. 305.

(5) Section 114 of the Housing Act of 1949 (42 U.S.C. 1465). 78 Stat. 788.

(6) Paragraphs (7)(b)(iii) and (8) of section 15 of the United States Housing Act of 1937 (42 U.S.C. 1415, 1415(8)), except the first sentence of paragraph (8). 78 Stat. 795.

(7) Section 2 of the Act entitled "An Act to authorize the Commissioners of the District of Columbia to pay relocation costs made necessary by actions of the District of Columbia government, and for other purposes", approved October 6, 1964 (78 Stat. 1004; Public Law 88-629; D.C. Code 5-729).

(8) Section 404 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3074). 79 Stat. 486.

(9) Sections 107 (b) and (c) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3307). 80 Stat. 1259.

(10) Chapter 5 of title 23, United States Code. 82 Stat. 830.

(11) Sections 32 and 33 of the Federal-Aid Highway Act of 1968 (Public Law 90-495). 23 USC 501. 82 Stat. 835.

(b) Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Acts or portions thereof under subsection (a) of this section. 23 USC 501 note, 510 note.

Effective Date

Sec. 221. (a) Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act shall take effect on the date of its enactment.

(b) Until July 1, 1972, sections 210 and 305 shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1972, such sections shall be completely applicable to all States.

(c) The repeals made by paragraphs (4), (5), (6), (8), (9), (10), (11), and (12) of section 220(a) of this title and section 306 of title III shall not apply to any State so long as sections 210 and 305 are not applicable in such State.

TITLE III—UNIFORM REAL PROPERTY ACQUISITION POLICY

Uniform Policy On Real Property Acquisition Practices

Sec. 301. In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, heads of Federal agencies shall, to the greatest extent practicable, be guided by the following policies:

(1) The head of a Federal agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(3) Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the head of the Federal agency concerned pays the agreed purchase price, or deposits with the court in accordance with section 1 of the Act of February 26, 1931 (46 Stat.

1421; 40 U.S.C. 258a), for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

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[12] (5) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling as required by title II will be available), or to move his business or farm operation, without at least ninety days' written notice from the head of the Federal agency concerned, of the date by which such move is required.

(6) If the head of a Federal agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the head of a Federal agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(8) If any interest in real property is to be acquired by exercise of the power of eminent domain, the head of the Federal agency concerned shall institute formal condemnation proceedings. No

Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the head of the Federal agency concerned shall offer to acquire the entire property.

Buildings, Structures, And Improvements

Sec. 302. (a) Notwithstanding any other provision of law, if the head of a Federal agency acquires any interest in real property in any State, he shall acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put.

(b)(1) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (a) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

(2) Payment under this subsection shall not result in duplication of any payments otherwise authorized by law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for any such payment, the tenant shall assign, transfer, and release to the United States all his right, title, and interest in and to such improvements. Nothing in this subsection shall be construed to deprive the tenant of any rights to reject payment under this subsection and to obtain payment for such property interests in accordance with applicable law, other than this subsection.

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Expenses Incidental To Transfer Of Title To United States

Sec. 303. The head of a Federal agency, as soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, shall reimburse the owner, to the extent the head of such agency deems fair and reasonable, for expenses he necessarily incurred for--

(1) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the United States;

(2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

(3) the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier.

Litigation Expenses

Sec. 304. (a) The Federal court having jurisdiction of a proceeding instituted by a Federal agency to acquire real property by condemnation shall award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if—

(1) the final judgment is that the Federal agency cannot acquire the real property by condemnation; or

(2) the proceeding is abandoned by the United States.

(b) Any award made pursuant to subsection (a) of this section shall be paid by the head of the Federal agency for whose benefit the condemnation proceedings was instituted.

(c) The court rendering a judgment for the plaintiff in a proceeding brought under section 1346(a)(2) or 1491 of title 28, United States Code, awarding compensation for the taking of property by a Federal agency, or the Attorney General

62 Stat. 933; *Ante*, p. 449. 68 Stat. 1241.

effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will in the opinion of the court or the Attorney General reimburse such plaintiff for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

Requirements For Uniform Land Acquisition Policies; Payments Of Expenses Incidental To Transfer Of Real Property To State; Payment Of Litigation Expenses In Certain Cases

Sec. 305. Notwithstanding any other law, the head of a Federal agency shall not approve any program or project or any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after the effective date of this title, unless he receives satisfactory assurances from such State agency that—

(1) in acquiring real property it will be guided, to the greatest extent practicable under State law, by the land acquisition policies in section 301 and the provisions of section 302, and

[14] 84 STAT. 1907

(2) property owners will be paid or reimbursed for necessary expenses as specified in sections 303 and 304.

Repeals

Sec. 306. Sections 401, 402, and 403 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3071-3073), section 35(a) of the Federal-Aid Highway Act of 1968 (23 U.S.C. 141) and section 301 of the Land Acquisition Policy Act of 1960 (33 U.S.C. 596) are hereby repealed. Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Act or portions thereof under this section.

79 Stat. 485.
82 Stat. 836.
74 Stat. 502.

Approved January 2, 1971.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 91-1656
(Comm. on Public Works)

SENATE REPORT No. 91-488
(Comm. on Government Operations)

CONGRESSIONAL RECORD:
Vol. 115 (1969): Oct. 23, 27 considered and passed Senate.
Vol. 116 (1970): Dec. 7, considered and passed House, amended.
Dec. 17, Senate agreed to House amendments with amendments.
Dec. 18, House concurred in Senate amendments.

Relevant Portions of the United States Constitution

ARTICLE III

* * *

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Relevant Portions of the United States Constitution.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

* * *

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

* * *

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in

jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

* * *

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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